

A PENNY FOR THEIR THOUGHTS: DRAFT RESISTANCE AT THE POSTON RELOCATION CENTER

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“First, we were to prove our loyalty by going into centers;
then we were to prove our loyalty by going out of the centers;
now, we are to prove our loyalty by going to fight.”

—Japanese American man, Poston Relocation Center,
January 24, 1944¹

I

INTRODUCTION

Aristotle famously argued that like things must be treated alike in any moral system that is committed to justice.² Aristotle would not have been happy with the cases of the Japanese American draft resisters of World War II. Sixty years ago, mostly in the summer and fall of 1944, several hundred young internees were prosecuted in a number of federal district courts for refusing to be drafted from behind the barbed wire of their wartime concentration camps.³ These cases were essentially identical. Yet different judges in different districts meted out widely varying prison sentences ranging from eighteen months in some cases in Idaho all the way up to five years in one case in Utah.⁴ In one federal district the resisters escaped with no criminal sentence at all.⁵ All of this varia-

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This article is also available at <http://law.duke.edu/journals/lcp>.
Analysis Reports, Reel 9].
2. See A

RISTOTLE, *ETHICA NICOMACHEA* V.3.1131a-1131b (W.D. Ross trans. 1925); Peter Westen, *The Empty Idea of Equality*, 95 HARV. L. REV. 537, 542-43 (1982).

3. I tell the story of these cases in my book *FREE TO DIE FOR THEIR COUNTRY: THE STORY OF THE JAPANESE AMERICAN DRAFT RESISTERS IN WORLD WAR II* (2001).

4. Idaho's federal district judge sentenced the resisters from the Minidoka Relocation Center who went to trial to jail for stints of three years and three months, and those who pled guilty to eighteen-month terms. See *id.* at 129. The resisters from the Heart Mountain Relocation Center in Wyoming got three-year sentences. See *id.* at 113. In one instance, a federal judge in Utah sentenced a resister to five years' incarceration. See *id.* at 182.

5. See *United States v. Kuwabara*, 56 F. Supp. 716, 719 (N.D. Cal. 1944) (dismissing outright the criminal charges against resisters from the Tule Lake Segregation Center on the due process basis that those charges were “shocking to the [judge’s] conscience”); *infra* text accompanying notes 224 and 304;

tion in outcomes led Frank Emi, one of the leaders of the draft resistance movement at Wyoming's Heart Mountain Relocation Center, to wax Aristotelian in his assessment of American criminal justice: "What in the hell is the matter with this justice system? It doesn't make sense. The charge[s are] the same, identical . . ."⁶

Emi and Aristotle would have found especially little merit in the outcomes of the draft resistance cases from the Poston Relocation Center near Parker, Arizona.⁷ There, a single federal judge, David Ling, imposed three different sentences on the same cohort of resisters at different moments in the same case. When the first group of ten resisters pled guilty in his court in March of 1944, he sentenced them to three years in jail.⁸ When three additional resisters came before him for trial in April of 1945, he sentenced them to one year in jail.⁹ And in October of 1946, when the cases of around ninety-five additional resisters came before him, he imposed a fine of one cent on each of them.¹⁰ This was not a case of three different judges seeing identical cases three different ways, which would seem objectionable enough: this was a case of *one* judge seeing identical cases three different ways at three different times.

Or perhaps it is worse than that for Judge Ling. He not only saw identical cases three different ways at three different times, but he also saw those cases in two different ways at the *same* time. Consider carefully the action Judge Ling ultimately took: he convicted the Poston resisters of the crime of willfully failing to report for induction into the army—a felony punishable by up to five years' imprisonment¹¹—yet the only punishment he saw fit to impose was a token fine of one cent. This was a criminal judgment at war with itself: the sol-

MULLER, *supra* note 3, at 131-45; Eric L. Muller, *Constitutional Conscience*, 83 B.U. L. REV. 1017, 1017-27 (2003) [hereinafter Muller, *Constitutional Conscience*].

6. Interview by Alan Koch with Frank Seishi Emi (Mar. 11, 1993 & Feb. 20, 1994), in JAPANESE AMERICAN WORLD WAR II EVACUATION ORAL HISTORY PROJECT: PART IV: RESISTERS 387 (Arthur Hansen ed., 1995).

7. The camp's official title was the "Colorado River War Relocation Center," but it was popularly known as the "Poston Relocation Center" in honor of Charles Poston, a nineteenth-century Arizona pioneer and territorial official. See PAUL BAILEY, CITY IN THE SUN: THE JAPANESE CONCENTRATION CAMP AT POSTON, ARIZONA 63, 79-80 (1971).

8. See *United States v. Ikemiya et al.*, (D. Ariz. 1944) (on file with NARA-Pacific Region, Laguna Niguel, CA), District Courts of the United States for District of Arizona, RG 21, Phoenix Division, Box 182, C-6782 - C6790 [subsequent citations to NARA-Pacific Region documents cross reference this citation and provide series, box, and case number only]; *United States v. Nakasaki* (D. Ariz. 1944) (on file with NARA-Pacific Region, *supra* note 8, at Box 182, C-6818).

9. See *infra* notes 224-25 and accompanying text. This is a slight simplification, for narrative ease, of what Judge Ling actually did in April of 1945. Of the ninety-seven cases he had before him, Judge Ling entered guilty verdicts on stipulated facts in the cases of three representative defendants, who then took appeals of their convictions to the Court of Appeals for the Ninth Circuit. The other ninety-four defendants agreed to await the outcome of those appeals and to have Judge Ling handle their cases consistently with the Ninth Circuit's ultimate judgment in the three test cases. See *infra* notes 254-84 and accompanying text.

10. See, e.g., *United States v. Miyamura*, Judgment and Commitment Order (D. Ariz. Oct. 7, 1946) (on file with NARA-Pacific Region, *supra* note 8, at Criminal Case No. 7128-7199, Box 183, C-7132).

11. See 50 U.S.C.S. App. § 311 (1942) (current version at 50 U.S.C.S. App. § 462 (2000)).

emn condemnation of a felony conviction coupled with a fine so absurdly low as to imply that the resisters deserved no condemnation.

It is easy to criticize Judge Ling's constantly shifting and internally conflicting resolutions of the cases of the Poston draft resisters.¹² But in this article I would like to defend Judge Ling's resolution of these cases, particularly the perplexing one on which he finally settled. Resistance to the draft at Poston was a remarkably diverse and ambiguous phenomenon. Poston's was the largest draft resistance of any of the camps: one hundred and seven young men refused either induction or a preinduction physical.¹³ As one might expect, the historical evidence reveals that these young men at Poston resisted the draft for more than just one reason. Some had reasons that struck many as noble. Many others had reasons that some saw as selfish or cowardly. Resistance at Poston was really a muddle of mixed motives. A criminal conviction and a one-penny fine captured the ambiguity of the Poston resistance about as well as any legal judgment could do.

But Judge Ling's judgment captured a good deal more than the variety of motives for resisting the draft. However diverse and ambiguous the resisters' reasons may have been, they all had a common source: the cruel dilemma of being forced to respond to an order to emerge from behind barbed wire to fight for somebody else's freedom. Although many of the Poston resisters may have been legally wrong in their resolution of that dilemma, the government was legally and morally wrong to have created it in the first place. The complexity and seeming contradiction in Judge Ling's judgment are therefore not deficits; they reflect the various complexities and contradictions in the situation that the judge confronted in sentencing the Poston resisters.

This article will tell the story of the Nisei¹⁴ draft resisters of the Poston Relocation Center and the varying punishments they received from Judge Ling. Part II briefly summarizes the history of the military's treatment of the Nisei between the Pearl Harbor attack of Dec. 7, 1941 and January of 1944, when the military announced the reinstatement of the draft. Part III focuses specifically on Poston, detailing the resistance that greeted the effort to recruit volunteers; Part IV details Poston's resistance to compulsory military service. In Part V, the article recounts the story of the criminal prosecution of the Poston resisters and the various punishments they received. Finally, Part VI defends Judge Ling's varying sentences as accurate reflections of the many ambiguities and conflicts that marked the phenomenon of Nisei draft resistance during World War II.

12. Especially vulnerable to criticism is Judge Ling's decision to leave in place the three-year sentences in the ten initial cases that had come before him in March 1944 when, in October of 1946, he imposed the one-cent fine on the cases of ninety-seven others.

13. The case files of the Poston resisters are interspersed between docket number C-6782 and docket number C-6913 in the Records of the District Courts of the United States for the District of Arizona, NARA-Pacific Region, *supra* note 8, at Box 182.

14. Nisei are second-generation Japanese Americans born in the United States. MINORU KIYOTA, *BEYOND LOYALTY: THE STORY OF A KIBEI* ix (1997).

II

JAPANESE AMERICANS AND MILITARY SERVICE, 1942-1944

Almost five thousand Nisei were serving in the United States Army in early December of 1941,¹⁵ and many thousands of others who had reached the age of eighteen were classified "I-A" and eligible for induction into the army under the Selective Training and Service Act of 1940.¹⁶ All of that changed when the Japanese attacked Pearl Harbor on December 7. Almost immediately, the Nisei in the military were either discharged or shifted to potato-peeling duty.¹⁷ Even more insultingly, on January 5, 1942, the Selective Service System reclassified all American citizens of Japanese ancestry into class IV-C, the category reserved for "aliens not acceptable to the armed forces."¹⁸

The Nisei's military status remained the same for over a year while they and their parents were evicted from their homes along the coast and warehoused in assembly and relocation centers. But some in the Japanese American community wanted the obligation of military service restored to the Nisei so that they could prove their American loyalty with their blood.¹⁹ The most vocal advocates of Nisei military service were the top officials of the Japanese American Citizens League ("JACL"), which was at the time (and still is) the most prominent national organization of American citizens of Japanese ancestry. At an emergency meeting in Salt Lake City just before Thanksgiving in 1942, while more than 110,000 Japanese Americans sat behind barbed wire, JACL delegates unanimously called for the government to reinstitute the draft for Japanese Americans.²⁰

The JACL received support from several key federal officials who also wished to see the draft reinstated for the Nisei. One was Dillon Myer, the head of the War Relocation Authority ("WRA"), who was eager to secure approval of a broad plan to allow the residents of the ten Japanese internment camps to relocate to points in the interior and believed that a showing of bravery by Japanese American troops would aid in that effort.²¹ Another was John J. McCloy, Secretary of War Henry Stimson's top assistant, who also thought that military service would be key to what he termed the "rehabilitation" of Japanese Americans.²² However, the JACL, Myer, and McCloy did not succeed right away in their primary goal of reinstating the draft for the Nisei. The most they were able to secure, in the spring of 1943, was the recruitment of Nisei volunteers to join a segregated army unit that would be called the 442nd

15. See MULLER, *supra* note 3, at 41-42.

16. For a description of the classification system under the Selective Training and Service Act of 1940, see *Fletcher v. United States*, 129 F.2d 262, 263 (5th Cir. 1942).

17. See MULLER, *supra* note 3, at 41-42.

18. See *id.* at 41.

19. See *id.* at 42-43.

20. See *id.* at 42.

21. See MULLER, *supra* note 3, at 44-45.

22. *Id.* at 43-44.

Regimental Combat Team.²³ Far fewer Nisei volunteered from the camps in the spring of 1943 than the JACL predicted,²⁴ but an enthusiastic response from young men in Hawaii guaranteed enough manpower to launch the Nisei unit.²⁵ Its impressive performance in training during the summer of 1943 and in European combat in the fall and early winter led the government finally to reopen the draft to the Nisei on January 20, 1944.²⁶

III

RESISTANCE TO MILITARY SERVICE AT POSTON BEFORE THE REINSTATEMENT OF THE DRAFT

Reinstatement of the draft for young Japanese Americans in January of 1944 may have been the realization of a dream for the JACL, but for some young men in the camps and their families, it was a nightmare. Between January of 1944 and mid-1945, when the camps closed, just over three hundred Nisei from nine of the ten WRA camps²⁷ chose to defy military orders to report for induction or for the physical examination that preceded induction. Of these three hundred resisters, fully *one-third* were from Poston. The disproportionate disobedience at Poston was a product both of the camp's general receptivity to resistance and of its own unique history of conflict specifically about military service.

23. *Id.* at 46-49. The Navy never accepted Japanese Americans during World War II. *See id.* at 47; ROGER DANIELS, CONCENTRATION CAMPS U.S.A.: JAPANESE AMERICANS AND WORLD WAR II, at 147 (1971).

24. *See* MULLER, *supra* note 3, at 49.

25. *See* COMM'N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED: REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS 197 (The Civil Liberties Public Education Fund, 1997) (1982) [hereinafter PERSONAL JUSTICE DENIED]; MULLER, *supra* note 3, at 58, 60.

26. *See* MULLER, *supra* note 3, at 60-64; DILLON S. MYER, UPROOTED AMERICANS: THE JAPANESE AMERICANS AND THE WAR RELOCATION AUTHORITY DURING WORLD WAR II 152 (1971).

27. The other nine centers were Manzanar and Tule Lake in California, Minidoka in Idaho, Heart Mountain in Wyoming, Gila River in Arizona, Topaz in Utah, Amache in Colorado, and Jerome and Rohwer in Arkansas. Heart Mountain had eighty-five resisters. MULLER, *supra* note 3, at 92. Minidoka and Amache each had between thirty and forty. *See id.* at 74; United States v. Akutsu et al., (D. of Idaho May 3, 1944) (on file with NARA-Pacific Northwest Region, Seattle, WA), District Courts of the United States for the District of Idaho, RG 21, Criminal Case No. 1911-51, Boxes 89-91, Nos. 2973-3027 *passim*; United States v. Takamoto et al., (D. Colo. June 30, 1944) (on file with NARA-Rocky Mountain Region, Denver, CO, District Courts of the United States for District of Colorado, RG 21, Criminal Case No. 1912-1960, Boxes 295-98, Nos. 10347-10360 *passim*, 10446-10464, 10506, 10608). Tule Lake produced twenty-seven. *See* MULLER, *supra* note 3, at 131. Topaz, Gila River, and the Arkansas camps had much smaller numbers of resisters. I have found no record of any draft resister from Manzanar. *See generally* Frank H. Wu, *Difficult Decisions During Wartime: A Letter from a Non-Alien in an Internment Camp to a Friend Back Home*, 54 CASE W. RES. L. REV. 1301, 1306 (2004) (explaining the dilemma of a fictional Nisei internee at Manzanar deciding between refusing or complying with the draft).

A. Poston's Predisposition to Resistance

That Poston was home to the largest number of draft resisters should come as no surprise. Poston was, after all, the largest camp.²⁸ When its population topped off at 17,814 in September of 1942, it was not only the largest WRA camp but the third largest city in the state of Arizona.²⁹ As a percentage of total camp population, only the eighty-five resisters from Heart Mountain in Wyoming exceeded the Poston resisters, and they did so just barely.³⁰

But resistance at Poston was a product of more than just numbers. Other less tangible features of the camp created an atmosphere generally conducive to discontent and disobedience. One, of course, was its climate. While each of the ten WRA camps suffered excesses of climate in one form or another—extreme cold at Heart Mountain in Wyoming and buggy humidity in swampy Arkansas—Poston surely must have been among the most intensely uncomfortable. Summertime temperatures in the desert of southwestern Arizona averaged around 107 degrees³¹ and ranged as high as 125,³² and the nights never really cooled off. Scorching winds kicked up dust storms of legendary proportions.³³ A young man in the summer of 1944, hot-headed and irritable after two years of government mistreatment, was not likely to be cooled or soothed by Poston's weather.

Another factor priming Poston for resistance was the circumstances of its founding. Poston was one of the first camps to open. It received its first inhabitants on May 8, 1942, and was home to more than 7,000 Issei³⁴ and Nisei by month's end.³⁵ Tule Lake opened at around the same time;³⁶ only Manzanar opened earlier.³⁷ The rest of the camps did not open until mid- to late summer,

28. Poston consisted of three sub-units, each located about three miles apart on a north-south axis. See Lane Ryo Hirabayashi, *Introduction: Why Read Nishimoto?*, in RICHARD S. NISHIMOTO, *INSIDE AN AMERICAN CONCENTRATION CAMP*, at xxxiii (Lane Ryo Hirabayashi ed., 1995). Unit I was designed to accommodate around 10,000 residents; each of Units II and III was designed for half that number. See PERSONAL JUSTICE DENIED, *supra* note 25, at 157.

29. See JEFFREY F. BURTON ET AL., *CONFINEMENT AND ETHNICITY: AN OVERVIEW OF WORLD WAR II JAPANESE AMERICAN RELOCATION SITES* 216 (2002).

30. Heart Mountain had 85 resisters out of an average 1944 population of 9,572, or 8.9 resisters per thousand camp residents; Poston had 107 resisters out of an average 1944 population of 12,923, or 8.3 resisters per thousand camp residents. See WAR RELOCATION AUTHORITY, *THE EVACUATED PEOPLE: A QUANTITATIVE DESCRIPTION* 21 (1946); *supra* notes 8-10, 27-28 and accompanying text.

31. See Nat'l Climatic Data Center, *Normal Daily Maximum Temperatures, Deg F*, available at <http://lwf.ncdc.noaa.gov/oa/climate/online/ccd/maxtemp.html> (last visited October 19, 2004) (on file with Law & Contemporary Problems) (showing average maximum temperature readings in various Arizona cities from 1971-2000).

32. See Hirabayashi, *supra* note 28, at xxxiii.

33. See *id.*; see also *The First Duststorm I Encountered in Poston* (Apr. 1, 1943), *microformed on Junior Red Cross Album*, RG 210, M1342, Reel 11 (on file with NARA, National Archives Building-Washington, DC).

34. Issei, or immigrants from Japan, is a combination of the Japanese words for "one" and "generation." DANIELS, *supra* note 23, at 5-6.

35. See BURTON ET AL., *supra* note 29, at 216.

36. See *id.* at 282.

37. See *id.* at 162-63.

or even early fall. This early opening date had a significant—and destabilizing—impact on the adjustment and experience of Poston’s residents.³⁸ They arrived at a time when the WRA had not yet settled upon any clear policies about the length of their confinement, the availability of employment, or the possibility of their relocation further east. All was uncertain. Residents of the later-occupied camps, by contrast, arrived to conditions of greater certainty, when better-defined WRA policies gave new residents “a more definite understanding of the limitations and possibilities”³⁹ of life in camp. Moreover, residents at the later-occupied camps all emerged from a harrowing summer packed into chaotic and sometimes squalid assembly centers along the West Coast;⁴⁰ to them, the inland relocation centers were an improvement. Most of Poston’s residents, by contrast, never went to an assembly center; they were evicted from their homes and sent directly to Poston.⁴¹ The camp was therefore all they knew, and to their eyes there was a good deal more about which to be dissatisfied.⁴² Thus, it is no accident that when protests and violence rocked the camps in the fall of 1942, they struck at Poston, Manzanar, and Tule Lake—the camps that opened early.

B. The Antecedents of Draft Resistance at Poston

Poston was the camp where tensions reached the boiling point first. While this first controversy was not about military service, it did interrupt the government’s earliest quiet efforts to recruit internees into the army. The event, known as the Poston “strike” or “incident,” took place in mid-November of 1942 at a time of great anger and frustration over substandard camp conditions and a simultaneous breakdown in relations between the camp’s administrators and the internees’ elected council, and between that elected council and the rank and file of the internee community.⁴³ A group of internees armed with a length of pipe broke into the apartment of Kay Nishimura, an internee whom many viewed as a corrupt government informant, and beat him savagely.⁴⁴ Camp officials immediately arrested two Kibei⁴⁵ men, one of whom, George Fujii, was “a popular and civic-minded young man who had been active in community affairs.”⁴⁶ Soon, hundreds and even thousands of internees gathered in protest outside the camp’s jail, led mostly by Issei men who, because they were

38. See EDWARD H. SPICER ET AL., *IMPOUNDED PEOPLE: JAPANESE AMERICANS IN THE RELOCATION CENTERS* 63-64 (1969).

39. See *id.* at 65.

40. For a fuller description of the assembly centers, see *PERSONAL JUSTICE DENIED*, *supra* note 25, at 135-48.

41. See Hirabayashi, *supra* note 28, at xxxv.

42. See SPICER ET AL., *supra* note 38, at 64.

43. See Extracts from a Report on the Poston Disturbance 1, *microformed on Community Analysis Reports*, Reel 9, *supra* note 1.

44. See BAILEY, *supra* note 7, at 119-21.

45. A Kibei was an American citizen of Japanese ancestry who had been educated in Japan. See KIYOTA, *supra* note 14, at ix.

46. SPICER ET AL., *supra* note 38, at 132.

aliens, had until then been barred from involvement in the camp's political life.⁴⁷ Camp administrators released Fujii because they had no evidence against him, but they continued to hold the other alleged assailant.⁴⁸ And so the protests continued, turning into a general strike. Political power ebbed from the ineffectual Nisei-dominated community council and flowed to emboldened Issei leaders. Eventually the camp's administrators negotiated a settlement of the uprising, under which the alleged assailant who was still detained would be released and tried under the camp's internal disciplinary system. The incident transformed the internal dynamics at Poston and ushered in an era of Issei political ascendancy that continued until the camp's closing.⁴⁹

The incident also brought an incipient military recruiting effort to a halt. After kicking most Japanese Americans out of the army in the wake of Pearl Harbor, the military quickly learned that very few non-Japanese Americans could read, write, or speak Japanese, and that this was a major hindrance in a war with Japan.⁵⁰ By November of 1942, the military had decided to make an appeal to the incarcerated Nisei and Kibei to leave camp for the Military Intelligence Service Language School at Camp Savage in Minnesota. As it happened, three Japanese American sergeants from Camp Savage arrived to recruit volunteers on November 17, 1942,⁵¹ the day before one thousand began protesting outside Poston's jail.⁵² A recruitment meeting that evening drew a crowd of about 350, mostly Issei and Kibei, but it quickly became clear that most were there to heckle and harass the army recruiters rather than to consider military service.⁵³ Most of the questions came from the Kibei, and most were at least mildly antagonistic.⁵⁴ When one of the army sergeants tried to make the case that the time was right for Japanese Americans to show their patriotism by volunteering into the service, an Issei in the audience shouted "Yose, yose, bakayaro!" which roughly translates as "stop your chattering, you god damn fool!"⁵⁵ Initially, some forty Kibei and Nisei expressed a desire to enlist.⁵⁶ But when they learned that they would be sent to the front, half of them dropped

47. *Id.* at 132-34.

48. Extracts from a Report on the Poston Disturbance 1-2, *microformed on* Community Analysis Reports, Reel 9, *supra* note 1.

49. See SPICER ET AL., *supra* note 38, at 134-35.

50. See Nat'l Japanese Am. Historical Soc'y, *The Military Intelligence Service (MIS) 1941-1952*, at <http://www.njahs.org/research/mis.html> (last visited Nov. 15, 2004) (on file with Law & Contemporary Problems).

51. See Tamie Tsuchiyama, Notes on Selective Service Registration 1 (Nov. 17, 1942), *microformed on* Japanese American Evacuation and Resettlement Records, 1930-1974 (JVAC), BANC MSS 67/14 c, Japanese-American Evacuation and Resettlement Study ("JERS"), Reel 239 (unpublished manuscript, on file with the Univ. of Cal.-Berkeley, Bancroft Library) [subsequent citations to JERS documents cross reference this citation and provide reel and frame information where available].

52. See Extracts from a Report on the Poston Disturbance 2, *microformed on* Community Analysis Reports, Reel 9, *supra* note 1.

53. See Tsuchiyama, *supra* note 51, at 1-3.

54. *Id.* at 1-2.

55. *Id.* at 2.

56. *Id.* at 3.

out.⁵⁷ The protests that broke out the next day further intimidated the potential volunteers, leading more than half of the remaining recruits to change their minds. In the end, only seven young men left Poston for Camp Savage as a result of that recruiting effort.⁵⁸

No sooner had the Poston strike ended than internees began to learn of the unanimous vote by delegates to the JACL's emergency conference in Salt Lake City to seek the restoration of the draft for the Nisei in the camps. Several of the delegates, including the JACL's national president, Saboru Kido, were from Poston and had purported to represent its residents at the conference.⁵⁹ Their vote took the issue of Nisei military service from the fringes of the resistance at Poston and thrust it front and center. On December 11, a group of men in Poston's Unit II pressured Saboru Kido into signing a letter declaring that the JACL delegates had been speaking only for themselves in Salt Lake City, not for the residents of Poston, and that the JACL's resolution in favor of military service "d[id] not apply to [the] people of Poston, Arizona."⁶⁰ The next day they pressed further, forcing him to sign a statement that directly contradicted JACL policy:

We will be willing to join the resolution of the JACL [seeking the draft] providing the U.S. government will recognize all of our constitutional and civil rights as American citizens by granting privileges to citizens and alien parents to return to their original places prior to evacuation, and that the U.S. government will reimburse us on losses incurred because of evacuation.⁶¹

A few weeks later, this second statement formed the basis of a strongly-worded petition to the President of the United States demanding restoration of civil rights that sixty-three Poston internees signed and sent off to Washington, DC.⁶² Even this public statement did not stem the anger that some at Poston were feeling about military service. On January 31, 1943, just three days after the army announced its plans to begin recruiting volunteers out of the camps into a segregated battalion,⁶³ eight men ambushed Saboru Kido in his barrack and clubbed him so viciously that he spent three weeks in the hospital.⁶⁴

Pressure over military service at Poston continued to mount in February of 1943. This was when a military recruitment team came to camp to "register" all of the camp's men of draft age—that is, to obtain answers from them to ques-

57. *Id.*

58. *Id.*

59. See MULLER, *supra* note 3, at 44; Tsuchiyama, *supra* note 51, at 3.

60. Tsuchiyama, *supra* note 51, at 3-4.

61. *Id.* at 4. This statement contradicted JACL policy because it made military service conditional on the restoration of rights.

62. Poston Internees to the President of the United States, 6 January 1943 (on file with NARA, National Archives at College Park, College Park, MD, JA INDUCTION, Feb. 1, 1943-Dec. 31, 1943, Record Group 107, Entry 183, Box 48, AWS 342.18).

63. See *supra* text accompanying note 23.

64. See MULLER, *supra* note 3, at 44; Matthew T. Estes & Donald H. Estes, *Hot Enough to Melt Iron: The San Diego Nikkei Experience 1942-1946*, <http://www.jahssd.org/cgi-bin/page2.cgi?donarticle2> (last visited October 21, 2004) (on file with Law & Contemporary Problems).

tions about their loyalty to the United States—and to persuade them to volunteer into the army.⁶⁵ The registration team hoped to meet Poston's designated quota of between four hundred fifty and five hundred volunteers⁶⁶ out of an eligible population of about 3,300 Nisei.⁶⁷ Registration teams were at all ten of the WRA camps simultaneously, and at many of the camps their efforts triggered open resistance and protest that caused the process to drag on for days and even weeks longer than the army had anticipated.⁶⁸ At Poston, the process went quickly and smoothly—at least on the surface.⁶⁹ Beneath the surface, however, conflict bubbled.

The main conflict was intergenerational.⁷⁰ Many Issei—probably a majority—did not want their sons to volunteer. They had a number of reasons. Some of them did not want their sons taking up arms against the country in which they still held citizenship and to which they felt loyal.⁷¹ Some felt that the government had so mistreated them, and had left them so vulnerable in camp, that they could not imagine losing the support of a son.⁷²

Among the Nisei, views were mixed. A limited number—far fewer than the army had hoped—did volunteer. Their reasons were varied. Some volunteers saw military service in just the way the government and the JAACL were presenting it to them—as an opportunity to prove the loyalty of Japanese Americans.⁷³ Some thought that a veteran's benefit in a civil service job would be the only way for a Japanese American to get fair treatment in the post-war job market.⁷⁴ Some, especially those with a medical or dental background, wanted the good pay and considerable professional experience that the army would provide.⁷⁵ Some wanted the financial security that the army offered.⁷⁶ Some simply

65. See MULLER, *supra* note 3, at 49-58.

66. Tsuchiyama, *supra* note 51, at 16.

67. See *id.* at 25.

68. See MULLER, *supra* note 3, at 49-58; SPICER ET AL., *supra* note 38, at 142-56.

69. See MULLER, *supra* note 3, at 52.

70. See, e.g., A Volunteer Speaks (Mar. 9, 1943) (unpublished manuscript, on file with the Division of Rare and Manuscript Collections, Cornell Univ. Library, Japanese-American Relocation Center Records, #3830, Box 11) (recording the struggles of an eighteen-year-old Japanese American with his parents when he told them that he volunteered for the army).

71. See, e.g., Untitled Manuscript 3 (Mar. 1943), (unpublished manuscript, on file with the Division of Rare and Manuscript Collections, Cornell Univ. Library, Japanese-American Relocation Center Records, #3830, Box 11) ("The people in the block severely criticized the mothers of the two volunteers for allowing their boys to go 'and fight against their own people.'").

72. See Sentiments—Volunteering for the Army 1 (Mar. 5, 1943), (unpublished manuscript, on file with the Division of Rare and Manuscript Collections, Cornell Univ. Library, Japanese-American Relocation Center Records, #3830, Box 11).

73. Letter, "Dave," Volunteer, U.S. Army, to Iwao Ishino 1 (Feb. 23, 1943), (unpublished manuscript, on file with the Division of Rare and Manuscript Collections, Cornell Univ. Library, Japanese-American Relocation Center Records, #3830, Box 11).

74. See, e.g., Tsuchiyama, *supra* note 51, at 21.

75. See, e.g., *id.*

76. See, e.g., *id.*

wanted a quick ticket out of camp, to escape boredom⁷⁷ or to leave an unhappy relationship.⁷⁸ Many of those who did wish to volunteer, however, met intense disapproval from their parents. A rumor circulated in camp that several volunteers had clashed so intensely with their parents that the young men had nervous breakdowns and needed to be briefly hospitalized.⁷⁹

Most Nisei, however, did not volunteer. Many showed up at the recruitment teams' question-and-answer sessions to ask difficult and even hostile questions that emphasized the mistreatment and discrimination they were enduring.⁸⁰ Some wished to avoid a clash with their parents and decided simply to stay in camp and wait for an eventual draft.⁸¹ Some resented that the army would accept the Nisei only in a racially segregated battalion.⁸²

In the end, the recruitment effort at Poston did less good and more harm than its government planners could have imagined. Only 228 young men volunteered—half the number that the army had anticipated.⁸³ The relations between Issei and Nisei, already strained, grew even more complicated. And the mood in camp, although calm, grew more depressed. “All the young fellows who have been so carefree and happy,” a volunteer wrote to a friend outside camp late in February, “are . . . walking around with long, sad, and serious faces.”⁸⁴

Spirits were undoubtedly buoyed, at least a bit, in May of 1943, when the camp held a large send-off assembly for its couple of hundred volunteers.⁸⁵ Camp administrators and internee leaders delivered patriotic speeches, and a

77. This view about military service was expressed by a Nisei contemplating the draft in mid-July of 1944: “Although I don’t especially see any reason to fight for the United States, I’d choose the army to another camp because I don’t think that I can stand another couple of years in jail or a camp.” Selective Service (July 19, 1944), *microformed on* Community Analysis Reports and Community Analysis Trend Reports of the War Relocation Authority, 1942-1946, RG210, M1342, Reel 10 (unpublished manuscript, on file with NARA-Washington, DC) [hereinafter Community Analysis Reports, Reel 10].

78. See, e.g., Tsuchiyama, *supra* note 51, at 21.

79. Tsuchiyama, *supra* note 51, at 10; Untitled Manuscript 4 (Mar. 1943) (unpublished manuscript, on file with the Division of Rare and Manuscript Collections, Cornell Univ. Library, Japanese-American Relocation Center Records, #3830, Box 11).

80. See Friday, Feb. 15, 1943 – 201 Mess Hall, 7:30 p.m., *supra* note 51, at Reel 239, Frames 323-29; Norris E. James, Transcript of Questions and Answers Asked Lieut. John Bolton, U.S. Army Team, at Mess Hall No. 310, Poston III (Feb. 9, 1943), *supra* note 51, at Reel 234, Frames 24-28; Meeting for Registration of Roku I (Feb. 10, 1943), (unpublished manuscript, on file with the Division of Rare and Manuscript Collections, Cornell Univ. Library, Japanese-American Relocation Center Records, #3830, Box 11); Tsuchiyama, *supra* note 51, at 14-16.

81. MULLER, *supra* note 3, at 53; cf. A Volunteer Speaks, *supra* note 70, at 2 (“I figured that I don’t want to stay in this camp and since I will be drafted anyway, I might as well go now.”).

82. See Letter from Soldier at Camp Robinson to a youth in camp (Mar. 6, 1943) (unpublished manuscript, on file with the Division of Rare and Manuscript Collections, Cornell Univ. Library, Japanese-American Relocation Center Records, #3830, Box 11) (“Of course I don’t like the idea of putting us all together like the Negroes”).

83. ROGER DANIELS, *ASIAN AMERICA: CHINESE AND JAPANESE IN THE UNITED STATES SINCE 1850*, at 252 (1988); cf. Tsuchiyama, *supra* note 51, at 25 (reporting 191 volunteers).

84. Letter from “Dave” to Iwao Ishino, *supra* note 73, at 2.

85. See Volunteers Leaving for Induction (May 5, 1943) (unpublished manuscript, on file with the Division of Rare and Manuscript Collections, Cornell Univ. Library, Japanese-American Relocation Center Records, Collection #3830, Box 11).

musical segment included singers, dancers, and mouth-organ players.⁸⁶ The volunteers were trained at Camp Shelby, Mississippi, alongside volunteers from the 100th Infantry Battalion from Hawaii, and in August of 1943 the soldiers left for North Africa as the 442nd Regimental Combat Team.⁸⁷ They saw their first combat late in September in Italy, and took very heavy casualties, word of which naturally reached and saddened the internee community they had left behind at Poston.⁸⁸ But the bravery and accomplishments of the men of the 442nd in the fall of 1942 also helped persuade army officials that the time was ripe for reinstating the draft.⁸⁹

IV

REACTION AND RESISTANCE TO THE DRAFT AT POSTON

A. Reactions to the Draft

The War Department announced its new policy of drafting the Nisei out of the camps on January 20, 1944.⁹⁰ The Nisei would be removed from the IV-C category that had so offended them, “reclassified by their Selective Service boards on the same basis as other citizens, and called for induction if physically qualified and not deferred.”⁹¹ The news was announced by radio⁹² and newspaper⁹³ at Poston, but took a few days to sink in.⁹⁴ Camp administrators thought the initial reaction was largely favorable. However, Project Attorney Theodore H. Haas, an astute observer of relations between the internees and the camp’s administration, suspected that what camp administrators were seeing was not the whole truth. In a January 29 report to WRA headquarters in Washington, DC, Haas noted that “in contradiction to their expressions to most [camp officials],” some of the camp’s residents “felt that in view of the treatment of the Japanese Americans it was not right to induct them.”⁹⁵

It is not at all surprising that Poston’s internees might be cynical about the fairness of the draft and of the ways in which it would be enforced. The Arizona courts, for example, had a poor record with internees from Poston. Just

86. *See id.*

87. MULLER, *supra* note 3, at 58, 60.

88. *See id.* at 60, 62-63.

89. *See id.* at 60; MYER, *supra* note 26, at 152.

90. MULLER, *supra* note 3, at 64.

91. War Department Bureau of Public Relations Press Branch, Selective Service to Be Reinstated for Americans of Japanese Descent (Jan. 19, 1944) (on file with NARA, National Archives at College Park, College Park, MD, “JA INDUCTION, Feb. 1, 1943-Dec. 31, 1943, RG” 107, Entry 183, Box 48 ASW 342.18).

92. *See* Diary of Richard S. Nishimoto, Entry of Jan. 21, 1944, at 1, *supra* note 51, at Reel 236, Frame 109 [hereinafter Nishimoto Diary].

93. *See* War Department Announces Drafting of Nisei, POSTON CHRON., Jan. 22, 1944, at 1.

94. *See* Nishimoto Diary, Entry of Jan. 21, 1944, at 1, *supra* note 51, at Reel 236, Frame 109.

95. Letter from Theodore H. Haas, Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 3 (Jan. 29, 1944), *supra* note 51, at Reel 196, Frame 24.

three days before the draft was reinstated, a Nisei pled guilty in the Phoenix courtroom of Judge David Ling, Arizona's lone federal district judge, to the charge of possessing liquor in Indian territory.⁹⁶ Judge Ling sentenced the man to a year in federal prison for this offense, while a non-internee convicted of the offense of selling liquor to an Indian received a sentence of five months.⁹⁷ This and other disparities in sentences meted out to internees led a lawyer from the Poston Project Attorney's Office to complain of the "general vague belief" prevailing in both the federal and state courts "that Japanese in a relocation center are either disloyal, suspected of disloyalty, or are potentially dangerous to the war efforts" of the United States.⁹⁸

On the specific question of the draft itself, the legal system and camp administrators were sometimes manipulative. In mid-February of 1944, as opposition to the draft at Poston gathered steam, a twenty-year-old Nisei was arrested for selling a few gallons of government gasoline out of the gas tank of a car in which he had been sent to the nearby town of Parker to do errands.⁹⁹ When the Project Attorney went to Phoenix to post bail for the young man, the U.S. Attorney prosecuting the case offered a deal: he told the lawyer that "he would not be interested in pressing th[e] case if the defendant was interested in going into the Army."¹⁰⁰ Poston's community analyst came up with an even sneakier way of enticing young men in camp into going along with the draft. In early July of 1944, as larger and larger numbers of young men refused to show up for induction, the Community Analyst David French argued to the Project Director that the Nisei should be lured into the service with alcohol:

The Nisei inductees—American soldiers. The M.P.'s—American soldiers. The M.P.'s have beer on the other side of the Highway. The inductees cannot drink beer on this side of the Highway. They should be treated alike. Therefore, beer for the Nisei inductees. Right?¹⁰¹

There is no evidence that the Project Director accepted French's suggestion.

By the same token, it is also not surprising that the camp's white administrators did not see the whole truth of the internees' reactions to the reinstatement of the draft. Those studying the Poston community noted the tendency of most to be "very much on guard" in talking about the draft even with other internees, to avoid "unpredictable misinterpretation."¹⁰² With administrators, people were

96. See Letter from Thomas Masuda, Acting Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 1 (Jan. 22, 1944), *supra* note 51, at Reel 196, Frame 21. This criminal offense is currently codified at 18 U.S.C. § 1154 (2000).

97. See Letter from Thomas Masuda to Philip M. Glick, at 1, *supra* note 51, at Reel 196, Frame 21.

98. *Id.* For more on the treatment of Nisei defendants in federal district courts in Wyoming and Idaho, see MULLER, *supra* note 3, at 100-30.

99. See Letter from Theodore H. Haas, Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 3 (Feb. 17, 1944), *supra* note 51, at Reel 196.

100. *Id.*

101. Nishimoto Diary, Entry of July 3, 1944, at 3, *supra* note 51, at Reel 237, Frame 126.

102. Draft: Issei 35 College Graduate (Jan. 26, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77.

even more guarded.¹⁰³ But this guardedness concealed a complex and varied set of reactions to the dilemma of the draft.¹⁰⁴

Many at Poston greeted news of the draft with resignation, and without surprise.¹⁰⁵ “We have been expecting that right along,” said one Nisei man in his forties shortly after the January 20 announcement.¹⁰⁶ “There is not too much excitement over the announcement,” said an Issei leader in his forties; “[m]any people expected it”¹⁰⁷ Genuine enthusiasm for military service was rare. “It’s a good thing; I want to go,” said one Kibei in his twenties. But, he added, “I hope we don’t have [racially] separate units.”¹⁰⁸ Even those who were enthusiastic about the draft could not escape the reality of discrimination against the Nisei.

More typical, in content and perhaps emotion, was the reaction of a draft-eligible Nisei who learned of the reinstatement of selective service when he asked to see the announcement that a camp administrator held in his hand. With his lower lip quivering, the young man said, “If I have to go, I have to go, but . . . I think it is selfish of the American government”¹⁰⁹ “[This] sure changes my life,” the upset Nisei added. “Now I don’t know what to do.”¹¹⁰ Another Nisei expressed a similar view: “If I go into the army, I’ll go with mixed feelings and most of my friends will also.”¹¹¹ A twenty-six-year-old Nisei put it this way on January 24, four days after the announcement: “If they draft us, I’ll go, but I wouldn’t know what I was fighting for, not after being treated this way.”¹¹²

103. *See id.*

104. Of all of the ten camps, Poston offers researchers the fullest glimpse into the complexity of the reaction to the draft and of the variety of motivations that young men had for resisting. Poston was the site of three independent anthropological studies, all of which were in operation at the time of the draft crisis in 1944. One was the work of the WRA’s Community Analysis office, under the direction of Edward Spicer. A second was the Bureau of Sociological Research, directed by Alexander Leighton, M.D. The third was the Japanese American Evacuation and Resettlement Study (“JERS”), under the direction of Dorothy Swaine Thomas, Ph.D., of the University of California at Berkeley. *See generally* LANE RYO HIRABAYASHI, *THE POLITICS OF FIELDWORK: RESEARCH IN AN AMERICAN CONCENTRATION CAMP* (1999) (documenting the sociological studies underway at Poston). Each of these programs employed Japanese Americans to gather and analyze demographic, sociological, and even psychological information about the incarceration experience at Poston. In addition, Richard S. Nishimoto, a Poston internee who worked with Thomas on the JERS, kept a daily diary of important camp events, and Theodore H. Haas and Scott Rowley, Poston’s Project Attorneys, sent detailed weekly reports to WRA headquarters in Washington, DC. These sources provide an unrivaled view into the reaction of the Issei and the Nisei to the reinstatement of the draft in 1944.

105. *See, e.g.*, Nishimoto Diary, Entry of Jan. 22, 1944, at 1, *supra* note 51, at Reel 236, Frame 114 (“I am ready whenever they call me There is nothing I can do about it when I get the call.”).

106. Drafting of Niseis: Nisei male in 40’s (Jan. 21, 1944) *microformed on* Community Analysis Reports, Reel 10, *supra* note 77.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. Selective Service: Nisei fellow on Stop List (Jan. 24, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77.

112. Draft: 3 Eligible men (Jan. 24, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77.

In the days after the announcement of the draft's reopening, some Nisei were simply unable to say that they would comply. "The draft is all right if one has never been put in the center," one person said, "but the fellows inside should not be drafted. You don't feel right about being drafted after being put in here."¹¹³ The reason that this internee did not "feel right" about being drafted was that the reinstatement of the draft seemed an unacceptable way to restore full Nisei citizenship. "If [we were] not drafted, we [would be] . . . willing to overlook the evacuation mistake of the government," he explained. But ". . . Nisei rights must be restored 100%, not only by being drafted but [by being] given full citizenship status."¹¹⁴ "My feeling," said a Kibei in his twenties, "[i]s that it's too late now for Selective Service. They took our citizenship away, put us in a concentration camp, and classified us as enemy aliens."¹¹⁵ The Nisei had "an uncomfortable feeling inside," this young man reported. "They have taken advantage of us; when they feel like it, they change our classification."¹¹⁶

The Issei's first reactions showed some of the same ambivalence as their children's. Interviewers canvassing the camp in the days after the announcement of the draft did find some Issei who voiced support for military service, but that support sat uncomfortably on a foundation of frustration and resignation. One Issei father of three, for example, said that "[b]oys born in this country have a responsibility and it is inevitable that they should serve their country."¹¹⁷ He noted that "[h]aving the citizens in camp is not right," but he nonetheless thought the draft "inevitable, so the people must do their duty to their country."¹¹⁸ An Issei widow expressed herself philosophically about the importance of the draft in helping the Nisei move forward: "The Issei's turn to sacrifice is over,"¹¹⁹ she said. "Thirty or forty years of toil ha[ve] evaporated into thin air." So now it was the Nisei's "turn to pioneer and to sacrifice so that the 3rd, 4th and 5th generations of Japanese ancestry can be proud for the sacrifices of the people in the foundation of this country." "Don't let these things be in vain," she implored her Nisei son. "Go do your very best so that the generation after you will be proud."¹²⁰

Most of the Issei, however, were unable to move past their anger on their children's behalf and their own worries and fears. "America has lots of nerve to play havoc with her Japanese population so selfishly, so lightly," said one Issei

113. Relocation: Selective Service (Jan. 21, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77.

114. *Id.*

115. Drafting of Niseis: Kibei in 20's (Jan. 24, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77.

116. *Id.*

117. Selective Service: B 5 Y (Feb. 3, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77.

118. *Id.*

119. Selective Service: Japanese Welfare (Feb. 5, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77.

120. *Id.*

woman with two draft-eligible sons.¹²¹ “When it is convenient the Niseis are not citizens—deprive them [of] all rights and put them in Centers; [w]hen they want more soldiers the Nisei are all loyal and worthy of the draft. . . . It’s a wonder the same people could say these things in one breath.”¹²² A wealthy Issei woman stated her views on the draft even more starkly:

I don’t like it. When I think of what the Government did to our children back in California, they could not even talk to American friends on our porch because the FBI would arrest them for violating curfew. . . . Then they put our children in here. The Italians and Germans did not go through this. Now they want to draft them. That is some irony, it is too much.¹²³

And an Issei father of two draft-age Nisei felt that he was about to lose everything: “After being evacuated to this relocation center from the outside I have lost everything in worldly goods. All I have left is my family.”¹²⁴ Because of this, he did not want his “boys to go to the army and give their lives up—whether for this country or any other country after being treated this way. I’d rather have them go to prison,” he said, “and know that they will come back alive someday.”¹²⁵

While many at Poston did nothing more than talk and worry about the draft in the weeks after January 20, some decided to try to take action to protect themselves from it. There were two strategies. One was to try to get out of camp, on the theory that people who had left camp, especially to do agricultural work, would be less likely to be drafted than those who remained in camp. Thus, in early February, requests for seasonal leave to do farm work spiked upward,¹²⁶ and Poston’s relocation office was swamped with applications.¹²⁷ Its staff had little doubt that many Nisei were looking to relocate as a way of escaping the draft.¹²⁸ The other strategy for avoiding the draft that some Nisei tried to use—often at the behest of their parents—was to file a request for expatriation.¹²⁹ In the month of February 1944 alone, 150 Nisei filed requests for expatriation—nearly half as many as had applied for expatriation in the twenty preceding months combined. In March, the number of expatriation requests

121. Reactions to New Selective Service Status of Nisei (Jan. 21, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77.

122. *Id.*

123. The Draft: Rich Farmer’s Wife (Jan. 24, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77.

124. Selective Service: Issei father of two boys of draft age (Jan. 24, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77.

125. *Id.*

126. See Relocation (Feb. 22, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77.

127. See Relocation: By Nisei relocation officer (Feb. 10, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77.

128. See *id.* See also Relocation: CR Selective Service, Issei Woman in 50’s (Feb. 1, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77 (“I hope they let us leave the project. It is not a matter of wages or opportunities; it is the matter of saving life.”).

129. See Notes of Meeting, Family Welfare Section 4 (Mar. 31, 1944), *supra* note 51, at Reel 234, Frame 56.

jumped to 375.¹³⁰ Poston's Family Welfare Section, which gathered data on these expatriation requests and the reasons behind them, concluded that for many Nisei, the draft was the government demand that caused years of resentment and anger over discrimination and incarceration to crystallize into action.¹³¹ This strategy, however, would ultimately fail because the government later elected to treat all expatriation requests filed after the date of the announcement of the reinstatement of selective service as invalid efforts at draft evasion.¹³²

B. Resistance to the Draft

The month of February 1944 was one of change and uncertainty in the administration of the Poston Relocation Center. At the very end of January, less than two weeks after the announcement of the reopening of the draft, Project Director Wade Head, who had managed Poston since its opening in 1942, left his post, to be replaced by Duncan Mills. Nearly simultaneously, Poston's Project Attorney Ted Haas, who had also been at Poston since it opened, left Poston for a position with the Office of Indian Affairs. He was replaced by Scott Rowley, a law professor from Drake University who was completely new to the WRA and conditions at Poston.¹³³ And on February 17, 1944, the War Relocation Authority itself ceased being a freestanding federal agency and was taken over by the Department of the Interior.¹³⁴

Perhaps to offer some stability in this difficult transition, WRA Director Dillon Myer traveled to Poston to meet with internee leaders and oversee the transition from Wade Head to Duncan Mills.¹³⁵ Myer tried to give an upbeat speech, emphasizing how much the services and mood at Poston and the other WRA camps had changed since they had opened in 1942.¹³⁶ He was, however, met with a barrage of pointed questions, including several about the draft.¹³⁷ One of those questions came from George Fujii, the twenty-nine-year-old Kibei whose arrest on false suspicion of involvement in the beating of Kay Nishimura in November of 1942 had led to the tumultuous Poston strike.¹³⁸ Fujii wanted to know whether the restoration of the draft would come along with any of the other rights or privileges that the Nisei had lost.¹³⁹ Fujii alluded in his question to the fact that while the Nisei were being asked to risk their lives for their country on battlefields in Europe, they were still not permitted to step foot in

130. *See id.* at 1.

131. *See id.* at 4.

132. *See* MULLER, *supra* note 3, at 71-72.

133. *See* Rowley to Succeed Haas, POSTON CHRON., Feb. 1, 1944, at 1.

134. *See* MYER, *supra* note 26, at 87; Nishimoto Diary, Entry of Feb. 17, 1944, at 2, *supra* note 51, at Reel 236, Frame 196.

135. *See* Nishimoto Diary, Entry of Jan. 27, 1944, at 1 *supra* note 51, at Reel 236, Frame 128.

136. *See id.* at 1-3.

137. *See id.* at 3-7.

138. *See id.* at 5. For more on the Poston strike, see *supra* notes 43-58 and accompanying text.

139. *See* Nishimoto Diary, Entry of Jan. 27, 1944, at 5, *supra* note 51, at Reel 236, Frame 128.

California. According to the diary of Richard Nishimoto, a Poston internee, Myer replied that he “could not answer this question because he did not know.”¹⁴⁰ Then, misinterpreting the question as supportive of the draft, Myer bragged that the draft was “one of th[e] things for . . . [which he] had been fighting.”¹⁴¹

This response, and the draft situation generally, did not sit well with George Fujii. Fujii was a soft-spoken, well-liked man who strongly opposed the eviction and incarceration of the Nikkei¹⁴² but who had nonetheless held a number of elective leadership positions while at Poston and who generally worked constructively with both his fellow internees and the administration.¹⁴³ The draft, however, seems to have pushed Fujii beyond his limits, and he decided to speak out about it. He wrote the following statement, which was mimeographed and posted throughout camp on February 6, 1944:

TO THE GENTLEMEN OF 17 YEARS TO 38 YEARS OF AGE

As you know fellow Americans, at last they did recognize and realize that we are Americans. We are going to be drafted soon, just like an American outside enjoying the freedom and liberty. But, don't you think they should reconsider the steps that they had taken?

As we believe that Mr. Roosevelt's speech at the Congress was not merely an excuse to draft us to soldier's and die in vain, we are demanding the following as an American Citizen:

- (1) Personal apology from Gen. DeWitt regarding his statement “Jap is Jap” and be expelled from his office. We also want apology from Mayor Bowron and Gov. Warren, and American Legion of Cal.
- (2) Freedom, Rights and Privileges should not be denied in California, militarily, economically, and politically.
- (3) Open the barb-wire and withdraw the Guard-duty of M.P.
- (4) Such signs as “No Jap,” “You Rat,” “No Orientals or Colored admitted” and etc. which were familiar in California, must be taken down throughout the U.S.A.
- (5) No discrimination upon the Japanese securing occupations.
- (6) Every opportunity must be given to the Japanese soldier for advancement in the Air Corps, in the Army, and in the Marine Corps.
- (7) Japanese soldier must be mixed with other Caucasian soldier to fight side by side.

VOICE OF NISEI¹⁴⁴

Despite its grammatical troubles, Fujii's document was a careful piece of writing. He was careful to express support for the draft, and took the draft as an

140. *Id.*

141. *Id.*

142. Nikkei refers to persons with any degree of Japanese ancestry living in the United States. Estes & Estes, *supra* note 64, at n.1.

143. See Personality Study, George S. Fujii (Oct. 2, 1943) (unpublished manuscript, on file with Division of Rare and Manuscripts Collection, Cornell Univ. Library, Japanese-American Relocation Center Records, #3830, Box 12).

144. Nishimoto Diary, Entry of Feb. 6, 1944, at 2, *supra* note 51, at Reel 236, Frame 154.

opportunity to call for the restoration of other rights and the correction of other wrongs. He did not call for the Nisei not to comply with their induction notices.

Poston responded approvingly to Fujii's circular.¹⁴⁵ An Issei woman, reading the message on a bulletin board, was heard to say, "That is fine. The person expresses the truth courageously."¹⁴⁶ An Issei man correctly inferred that the author was a Kibei: "Yes, it looks like a Kibei's work. It takes a Kibei to have spunk enough to do something like this." An elected councilman, however, thought that it presented good ideas, but might not be effective: "That is al[l][] right," he said, "but what good does it do? The Niseis should get together and form a resolution and present it formally to Washington."¹⁴⁷

But some young men already were getting together. On the night of February 10, 1944, a group of Nisei, most of them Kibei, met in Poston's Unit III to discuss the draft.¹⁴⁸ According to Nishimoto, they agreed at that meeting that they would refuse to go into the army when they received their induction notices. They insisted that they were willing to go to jail for their decision.¹⁴⁹

The next night, another mimeographed notice appeared throughout camp.¹⁵⁰ This one pressed further than the first "Voice of the Nisei" circular. It reported that the Nisei were "loyal and willing to serve and bear arms at any time to protect the precious rights bestowed upon us."¹⁵¹ It emphasized that the Nisei had "been taught and reared from tender youth the Democratic principles of our Government—a heritage well worth being proud of—which allow us the freedoms not granted in any other country."¹⁵² And it repeated the complaint that the Nisei had been stripped of their rights as citizens.¹⁵³ But at the end, in all capital letters, the notice urged that "until such time as all the wrong has been righted and adequate compensation made, we, the Niseis, should not be compelled to bear arms; and to such date as our status is definitely established as to what right and privilege we are fighting for."¹⁵⁴

Perhaps emboldened by the favorable camp reaction to the earlier circular, the authors of this notice—one of whom was George Fujii¹⁵⁵—pushed a bit closer to the edge of the law. The notice praised the draft, to be sure, but it also came closer than had the circular to suggesting that the Nisei refuse to be drafted until their rights were restored. It ultimately avoided explicit encour-

145. See Reaction to "Voice of the Nisei" No. 1 on Selective Service (Feb. 10, 1944), *microformed on Community Analysis Reports*, Reel 10, *supra* note 77.

146. *Id.*

147. *Id.*

148. Nishimoto Diary, Entry of Feb. 11, 1944, at 2-3, *supra* note 51, at Reel 236, Frame 169.

149. *Id.*

150. Nishimoto Diary, Entry of Feb. 12, 1944, at 3, *supra* note 51, at Reel 236, Frame 173.

151. *Id.*

152. *Id.*

153. See *id.*

154. *Id.* at 4.

155. See Nishimoto Diary, Entry of June 19, 1944, at 3, *supra* note 51, at Reel 237, Frame 88.

agement of draft resistance, however, by arguing that the government ought not enforce the law rather than that the Nisei ought not follow it.

This second notice caused alarm. Block managers worried that the last lines of the notice were seditious, and they resented that it had been posted on official bulletin boards.¹⁵⁶ Their supervisor directed that the notice be taken down throughout camp.¹⁵⁷ A couple of days later, the camp administration's internal security officers went around camp taking down any remaining notices.¹⁵⁸ Internee leaders were called in to a conference with the camp's top administrators and "admonished to prevent [a] recurrence" of the notices in camp.

Like many protest movements, however, this one moved beyond the point at which its originators might have wished it to stop. On February 15, 1944, a third mimeographed notice was surreptitiously circulated by hand in camp. This one, with which George Fujii maintained he had had nothing to do,¹⁵⁹ was quite blunt:

NISEIS OF DRAFTABLE AGE

BACK THE VOICE OF NISEIS WHICH HAVE BEEN PUBLISHED.

Those of you who have received notices for pre-induction physical.

Cooperate and refuse to go until we have reached our goal. (Fighting for our rights)

Niseis of all Poston Camp will back you in your demand for the rights which we rightfully deserve.

We must receive such rights or we will have nothing to fight for.

Those who do not care for their rights and are willing to be drafted, please wait until our rights are granted or until we are all branded as Pro-Axis elements. Then volunteer to show loyalty.

BACK OUR FIGHT FOR CONSTITUTIONAL RIGHTS.¹⁶⁰

For many internees at Poston, this handbill pushed too far. Many worried that an overt call to "refuse to go" when called for induction was illegal and wanted nothing to do with it.¹⁶¹

Cooler heads among internee leaders quickly decided that Poston needed a more appropriate vent for angry feelings about the draft, and needed it quickly. On February 17, a number of Kibei asked the internee Executive Board for permission to hold a mass meeting of the Nisei in Poston's Unit I, to ratify a resolution calling for the restoration of Nisei rights.¹⁶² Initially, the board was reluctant, but the sponsors of the meeting persuaded the board that this was not a subversive effort.¹⁶³ They then took the request to the camp's white adminis-

156. See Nishimoto Diary, Entry of Feb. 12, 1944, at 4, *supra* note 51, at Reel 236, Frame 173.

157. See *id.* at 5.

158. See Nishimoto Diary, Entry of Feb. 15, 1944, at 1, *supra* note 51, at Reel 236, Frame 183.

159. Nishimoto Diary, Entry of Feb. 25, 1944, at 5, *supra* note 51, at Reel 236, Frame 228.

160. Nishimoto Diary, Entry of Feb. 16, 1944, at 2-3, *supra* note 51, at Reel 236, Frame 191.

161. See *id.* at 3.

162. See Nishimoto Diary, Entry of Feb. 18, 1944, *supra* note 51, at Reel 236, Frame 201.

163. See *id.* at 4.

trators, who also needed to be persuaded that the meeting was not designed to produce a subversive or seditious resolution.¹⁶⁴ Once they were persuaded of this, the meeting went off at two in the afternoon on February 19 under the sponsorship of the Selective Service Advisory Committee, a joint administration-internee board that had been hastily set up to oversee the draft at Poston.¹⁶⁵ It was a brilliant piece of politics. With internee leaders and administration officials on the dais, internees asked many questions about the draft, only some of which the advisory board could answer. Then, on a show of hands, those in attendance endorsed a mild resolution calling—much as George Fujii’s first circular had done—for the simultaneous return of the Nisei’s civil rights with the return of selective service.¹⁶⁶ Camp officials and internee leaders undoubtedly left the meeting feeling that they had managed to defuse a potentially volatile situation.

Within a few hours, however, Poston again risked chaos. At 5:30 in the afternoon, FBI agents arrested George Fujii on a charge of sedition for his role in the “Voice of the Nisei” circulars.¹⁶⁷ At 9:00 that night, the Project Director convened an emergency meeting of his top legal administrative staff and the internee leadership to deal with the crisis that he feared would unfold when the camp awoke the next morning to learn that a very popular figure had been arrested for demanding Nisei civil rights.¹⁶⁸ The administrators feared another strike.¹⁶⁹ All of the internees at the meeting, however, agreed that no disturbance was likely,¹⁷⁰ especially if the situation was well-managed, and they turned out to be right.¹⁷¹ The Project Director astutely noted that Fujii’s arrest would likely make people afraid to support the mild petition that had been adopted that afternoon with his approval, and he asked that the internee leadership reassure the camp’s population that they could sign the approved petition without fearing prosecution.¹⁷² This reassurance was needed because many internees were indeed reluctant to affix their names to any statement on the draft after seeing the government’s reaction to the “Voice of the Nisei” circulars.¹⁷³ But eventually, 954 out of about 1,900 draft-age men signed the petition.¹⁷⁴

164. See Selective Service: Nisei administration worker (Feb. 19, 1944), *microformed on Community Analysis Reports*, Reel 10, *supra* note 77.

165. See Nishimoto Diary, Entry of Feb. 15, 1944, at 4, *supra* note 51, at Reel 236, Frame 183.

166. See Nishimoto Diary, Entry of Feb. 19, 1944, at 1-3, *supra* note 51, at Reel 236, Frame 206.

167. See Nishimoto Diary, Entry of Feb. 20, 1944, at 1, *supra* note 51, at Reel 236, Frame 208.

168. See Nishimoto Diary, Entry of Feb. 19, 1944, at 6-10, *supra* note 51, at Reel 236, Frame 206.

169. See *id.* at 9.

170. See *id.*

171. See Letter from Scott Rowley, Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 2 (Feb. 26, 1944), *supra* note 51, at Reel 196, Frame 38.

172. See Nishimoto Diary, Entry of Feb. 19, 1944, at 10, *supra* note 51, at Reel 236, Frame 206.

173. See Nishimoto Diary, Entry of Feb. 25, 1944, at 4, *supra* note 51, at Reel 236, Frame 228; Nishimoto Diary, Entry of Feb. 26, 1944, at 2, *supra* note 51, at Reel 236, Frame 230.

174. See *900 Sign Petition*, POSTON CHRON., Mar. 9, 1944, at 1.

Overwhelming support was also soon forthcoming for George Fujii, who was in jail in Phoenix. A private committee was formed about a week after Fujii's arrest to raise money for his defense.¹⁷⁵ It was composed largely of elected internee leaders and block managers and had the support of the camp's administration. A Nisei attorney from the Project Attorney's Office predicted that because of anti-Japanese prejudice in the Arizona jury pool, Fujii would need funds not just for bail and a trial, but also for an appeal.¹⁷⁶ The Committee therefore set a fundraising goal of \$2,000.¹⁷⁷ Some internees complained about this effort, contending that Fujii had caused too much trouble in camp and that the "Voice of the Nisei" circulars did not reflect their views.¹⁷⁸ Some were also afraid that the FBI would see a contribution to Fujii's defense as obstruction of justice or sedition.¹⁷⁹ According to Richard Nishimoto, many internees were "afraid of the FBI more than any reasonable person [could] imagine."¹⁸⁰ In the end, though, the outpouring of support for Fujii was overwhelming. By early April, the Friends of George Fujii Committee had collected the incredible sum of \$3,262.20 from all three of the Poston units.¹⁸¹

Scott Rowley, Poston's new Project Attorney, told his superiors in Washington that he thought the Fujii case bore careful watching, as it was "somewhat of a test case to determine the limits within which any criticism or comments on selective service may be made by evacuees."¹⁸² And this was certainly how Poston's residents took it. According to Nishimoto, internees understood that the FBI took Fujii out of camp so quickly because "they were anxious to put a stop to the rapidly growing agitation against the draft."¹⁸³ The FBI's strategy worked. After Fujii's arrest, Nishimoto reported that discussion and debate about the draft decreased markedly. Writing on March 11, Nishimoto observed that "there is no organised [sic] resistance to the progress of the Nisei draft," and "no attempt by anyone to influence others to resist induction."¹⁸⁴ The most one heard was "grumblings here and there, but they [did] not amount to anything."¹⁸⁵

That the talk of resistance subsided did not mean that resistance itself disappeared. In fact, on the morning of March 19, 1944, when the first session of preinduction physical examinations began, fifteen young men out of 230 were

175. See Nishimoto Diary, Entry of Feb. 26, 1944, at 3, *supra* note 51, at Reel 236, Frame 230.

176. See *id.*

177. See *id.*

178. See Nishimoto Diary, Entry of Mar. 2, 1944, at 1, *supra* note 51, at Reel 236, Frame 255.

179. See *id.*

180. *Id.*

181. See Nishimoto Diary, Entry of Apr. 6, 1944, at 1, *supra* note 51, at Reel 236, Frame 358.

182. See Letter from Scott Rowley, Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 1-2 (Mar. 4, 1944), *supra* note 51, at Reel 196, Frame 41.

183. See Nishimoto Diary, Entry of Mar. 11, 1944, at 3, *supra* note 51, at Reel 236, Frame 276.

184. *Id.*

185. *Id.*

not there.¹⁸⁶ The camp's internal security director went to find the missing Nisei, and succeeded in talking six of the fifteen into showing up.¹⁸⁷ Nine, however—none of them Kibei¹⁸⁸—refused to go,¹⁸⁹ and some of them belligerently told the internal security director to go to hell.¹⁹⁰ The resisters expected to be picked up and taken to jail that day, but they were not.¹⁹¹ Instead, they hung around camp for a few days, while a top camp administrator met with each one to try and persuade him to change his mind.¹⁹² They were, however, unmovable.¹⁹³ On March 25, 1944, FBI agents came to Poston, rounded them up, handcuffed them, and carted them off in three big sedans to a Phoenix jail.¹⁹⁴ They were joined late in April by an additional young man who refused to appear for his physical examination when another 158 were called in mid-April.¹⁹⁵

No public outcry ensued when these first ten resisters were arrested. According to Nishimoto, Poston was “sitting back and watching what would happen” to the resisters.¹⁹⁶ He reported two general views on those resisting the draft. One group, which Nishimoto labeled “a small portion” of camp residents, saw the resisters as “courageous and noble in their attempts to express their grievances in this way.”¹⁹⁷ Another group, however, which Nishimoto saw as larger, “condemn[ed those attempts] as false and unnecessary bravado, which would injure the future of the Japanese in this country.”¹⁹⁸ Resistance was, in any case, relatively modest at this point in 1944: of the 481 young men called for preinduction physicals, only ten had not complied.

Each of those ten resisters pled guilty late in March to a single count of willfully failing to report for a preinduction physical examination in violation of 50 U.S.C.S App. § 311 (1942).¹⁹⁹ The judge, David Ling, was an Arizona native who had served as both county attorney and a state superior court judge in the mining-dominated town of Clifton, Arizona,²⁰⁰ before being appointed to the

186. See Nishimoto Diary, Entry of Mar. 20, 1944, at 1, *supra* note 51, at Reel 236, Frame 311.

187. *Id.*

188. *See id.*

189. *See 171 Pass, 50 Rejected Sunday*, POSTON CHRON., Mar. 21, 1944, at 1.

190. Nishimoto Diary, Entry of Mar. 20, 1944, at 1, *supra* note 51, at Reel 236, Frame 311.

191. *See* Nishimoto Diary, Entry of Mar. 24, 1944, at 2, *supra* note 51, at Reel 236, Frame 320.

192. *See id.*

193. *See id.*

194. *See Nine Taken to Federal Jail for Evading Physical Exam*, POSTON CHRON., Mar. 28, 1944, at 1; Letter from Scott Rowley, Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 1 (Mar. 25, 1944), *supra* note 51, at Reel 196, Frame 48; Nishimoto Diary, Entry of Mar. 25, 1944, at 5, *supra* note 51, at Reel 236, Frame 323.

195. *See 151 Men Examined*, POSTON CHRON., Apr. 22, 1944, at 1; *Nakasaka Held for Evading Physical*, POSTON CHRON., Apr. 29, 1944, at 1.

196. Nishimoto Diary, Entry of Mar. 24, 1944, at 3, *supra* note 51, at Reel 236, Frame 320.

197. *Id.*

198. *Id.* Nishimoto's assessment of the comparative sizes of these two groups must be examined cautiously, because Nishimoto himself strongly supported Nisei military service. *See* Tsuchiyama, *supra* note 51, at 5.

199. Current version at 50 U.S.C.S. App. § 462 (2000).

200. *See* Sandra Day O'Connor, *Courthouse Dedication: Justice O'Connor Reflects on Arizona's Judiciary*, 43 ARIZ. L. REV. 1, 3 (2001).

federal bench by Franklin Roosevelt in 1936. According to Justice Sandra Day O'Connor, who knew and practiced before Judge Ling, he was an unpretentious and taciturn man who handled all of Arizona's federal caseload and maintained a reputation as an excellent trial judge.²⁰¹ Ling sentenced each of the resisters to three years' incarceration, and they were sent off to the medium-security La Tuna federal prison near El Paso, Texas, to serve their time.²⁰² Thus, by April of 1944, draft resistance at Poston appeared to be finished. George Fujii was awaiting trial on sedition charges for speaking out against the draft, and the handful of Nisei who had refused the draft were in federal prison serving lengthy sentences. Scott Rowley ventured a guess in his April 8 report to WRA headquarters that the movement against the draft at Poston had "burned itself out."²⁰³

Rowley was wrong. In fact, draft resistance at Poston had barely gotten started. In late April and May, five more young men refused to appear for their physicals.²⁰⁴ They were arrested on May 27, 1944, but unlike the earlier ten, most of them were released on bail and returned to camp to await trial.²⁰⁵ Rowley took their return as an opportunity to interview them about their reasons for resisting the draft and to persuade them to change their minds.²⁰⁶ The young men were at first reluctant to talk, but eventually opened up and revealed their thinking to the lawyer. Rowley's impressions capture well the anger and confusion that the young men were experiencing:

I believe, that in all cases, they are intelligent, well-meaning boys, who are unsettled and confused about their rights and their status as citizens and who have exaggerated feelings of discrimination. . . . I doubt very much if any of them will be dangerous to our national security or that they have any real feeling of loyalty to Japan; and if they can be straightened out in their mental attitude, they may become good soldiers and good citizens.²⁰⁷

Rowley expressed his "hope that they [would] change their attitude and decide to accept service in the army rather than to go to prison for years."²⁰⁸ But none of them changed his mind.

Indeed, within just a few weeks, Poston was in a headlong rush into large-scale draft resistance that caught the camp's administrators by surprise.²⁰⁹ On

201. *See id.*

202. *See* Letter from Scott Rowley, Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 2 (Apr. 1, 1944), *supra* note 51, at Reel 196, Frame 51.

203. Letter from Scott Rowley, Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 1 (Apr. 8, 1944), *supra* note 51, at Reel 196.

204. *See* Letter from Scott Rowley, Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 2 (June 3, 1944), *supra* note 51, at Reel 196.

205. *See* Letter from Scott Rowley, Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 1 (June 10, 1944), *supra* note 51, at Reel 196.

206. *See* Letter from Scott Rowley, Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 2 (June 17, 1944), *supra* note 51, at Reel 196.

207. *Id.*

208. *Id.*

June 18, 1944, fifteen out of sixty-five Nisei refused induction.²¹⁰ On June 28, twenty-one out of seventy-eight refused.²¹¹ In mid-July, it was three out of twenty-nine.²¹² In mid-August, fourteen out of fifty-seven refused induction.²¹³ In late September, in a carefully staged act of defiance, seven out of thirty-five Nisei simultaneously said “no!” when the soldier in charge told the group to raise their right hands to be sworn in.²¹⁴ On October 30, eleven out of thirty-six refused.²¹⁵ When all was said and done, over one hundred young men at Poston resisted the draft.

It is difficult to specify exactly what happened at Poston in the summer and fall of 1944 to rekindle resistance to the draft after it had nearly been snuffed out. Several factors, however, undoubtedly emboldened the Nisei. The most important event was George Fujii’s sedition trial in early June. Although his supporters had raised enough money to pay for the appeal that they imagined would be necessary after a conviction by a biased jury, the case never even went to the jury. Fujii admitted involvement in the first two “Voice of the Nisei” circulars, but federal judge David Ling found those to be non-seditious as a matter of law.²¹⁶ Not surprisingly in light of its open call for defiance of the draft, Ling deemed the third circular seditious, but the government offered no evidence that linked Fujii to its preparation or distribution.²¹⁷ Judge Ling therefore granted a defense motion for a directed verdict of acquittal, and Fujii was released to return to Poston.²¹⁸ While no document reporting the Poston community’s reactions to Fujii’s acquittal survives, some in camp undoubtedly took it as a vindication of Fujii for speaking out against the draft and perhaps even as an endorsement of his criticisms. It probably was not mere coincidence that the

209. Compare *id.*, at 2 (“A selective service pre-induction physical was scheduled here for June 18. . . . Of course, I do not know what the results will be, but the situation seems to be such at the present time, that I do not anticipate that there will be many, if any, refusals.”) with Letter from Scott Rowley, Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 1 (June 26, 1944), *supra* note 51, at Reel 196 (“I am afraid I made a poor guess on the results of the induction on June 18, as 15 boys refused induction.”).

210. Nishimoto Diary, Entry of June 24, 1944, at 1, *supra* note 51, at Reel 237, Frame 100.

211. See *21 Refuse Induction*, POSTON CHRON., July 3, 1944, at 6.

212. Letter from Scott Rowley, Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 1 (July 24, 1944), *supra* note 51, at Reel 196.

213. Letter from Scott Rowley, Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 3 (Aug. 21, 1944), *supra* note 51, at Reel 196, Frame 107.

214. See Letter from Scott Rowley, Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 2 (Oct. 2, 1944), *supra* note 51, at Reel 196; Nishimoto Diary, Entry of Oct. 5, 1944, at 2, *supra* note 51, at Reel 238, Frame 20.

215. Letter from Scott Rowley, Project Attorney, Colorado River War Relocation Center, to Philip M. Glick, Solicitor, War Relocation Authority 2 (Nov. 6, 1944), *supra* note 51, at Reel 196.

216. See *Fujii Acquitted of Violating Sedition Act*, POSTON CHRON., June 10, 1944, at 1; Nishimoto Diary, Entry of June 19, 1944, at 3, *supra* note 51, at Reel 237, Frame 88;.

217. See *Fujii Acquitted of Violating Sedition Act*, *supra* note 216, at 1; Nishimoto Diary, Entry of June 19, 1944, at 3, *supra* note 51, at Reel 237, Frame 88.

218. See *Fujii Acquitted of Violating Sedition Act*, *supra* note 216, at 1; Minute Entry of Wednesday, June 7, 1944, United States of America v. George S. Fujii, United States District Court for the District of Arizona, National Archives and Records Administration Pacific Region (Laguna Niguel), RG 21, Criminal Case #6781, Box 175, File C6781.

number of draft resisters at Poston spiked upward for the first time just after George Fujii was acquitted of sedition for speaking out against the draft.

Another circumstance that spurred young men to resist was the encouraging presence in camp of other resisters. The first ten young men who resisted the draft in March and April were immediately arrested and detained until they entered guilty pleas, and then sent off to prison to serve their sentences.²¹⁹ Starting in June, however, the pattern changed. Friends began getting the money together to post bail for the young men, and most returned to camp from Phoenix just a day after their arrest. According to the Project Attorney, these friends wanted them returned to camp so that they could persuade the resisters to change their minds and submit to induction.²²⁰ But it did not work out that way. Not only did they not change their minds, but the resisters began persuading other young men to join them.²²¹ And with each new crop of resisters who returned to camp on bail, the ranks of the defiant in camp grew, as did their influence.²²² These young men also now had George Fujii, the David who slew Goliath, back among them. Fujii was seen on several occasions conferring with groups of young Nisei, telling them that it was unconstitutional to draft the Nisei out of the camps.²²³

Additional encouragement to the Poston resistance undoubtedly came from the ruling in July of 1944 in a case involving the draft resisters from the Tule Lake Segregation Center. In *United States v. Kuwabara*,²²⁴ Louis E. Goodman, a United States District Judge for the Northern District of California, dismissed the draft evasion prosecutions brought against twenty-six Tule Lake internees on the grounds that it was shocking to the conscience and a violation of due process to incarcerate a person on account of ancestry, draft him into the army, and then prosecute him for resisting.²²⁵ While the news of the verdicts in other cases of Nisei resistance in the summer and fall of 1944 was grim, this surprise victory for the Tule Lake Nisei undoubtedly gave heart to those contemplating resistance at Poston, especially those who, like most of the Tule Lake resisters, had filed requests for expatriation from the United States.

Finally, the resistance at Poston was buoyed by significant (albeit not unanimous) support from the Poston internee community. This support never found voice in any official or mass action by internees or their elective representatives, but evidence of it can nonetheless be found in the surviving archival sources. For example, in June of 1944, after George Fujii's unexpected acquit-

219. See *supra* notes 194-195, 202 and accompanying text.

220. Letter from Scott Rowley to Philip M. Glick, at 1, *supra* note 51, at Reel 196.

221. See Letter from Scott Rowley to Philip M. Glick (June 26, 1944), at 1-2, *supra* note 51, at Reel 196.

222. The Poston experience shows the wisdom (if not the fairness) of the approach taken at other camps, where draft resisters were denied bail pending trial in order to keep them out of camp. See MULLER, *supra* note 3, at 75-76 (Minidoka), 88-89 (Heart Mountain).

223. See Nishimoto Diary, Entry of June 24, 1944, at 4, *supra* note 51, at Reel 237, Frame 100.

224. 56 F. Supp. 716 (N.D. Cal. 1944).

225. See *id.* at 719.

tal on sedition charges, the Friends of George Fujii Committee had to decide what to do with the more than one-thousand-dollar surplus left in the fund they had raised.²²⁶ Several members of the committee argued “vociferously” that they should send the money to the draft resisters at the Heart Mountain Relocation Center to help them fight the criminal charges they faced.²²⁷ The proposal was ultimately defeated due to the objections of several committee members who felt the committee was bound to return the money *pro rata* to its donors.²²⁸ However, the strongly voiced proposal reveals both that there was support in camp for draft resistance in June of 1944 and that at least some saw a clear connection between the cause of George Fujii—a cause that had been popular beyond anyone’s expectations—and the cause of young men who were resisting the draft.

In early July of 1944, Project Attorney Rowley made an appearance before the Community Council to appeal for their help in “curb[ing] the increasing wave of selective service violators.”²²⁹ The lawyer may have hoped for their cooperation, but, in the words of Nishimoto, his appeal “boomeranged on him.”²³⁰ The council members responded with strong support for the resisters. Many on the council told Rowley that “it was natural that there were many violators because [the Nisei] did not know what they were going to fight for.”²³¹ To draft the Nisei was to demand that they “sacrifice their lives in vain.”²³² Other council members complained that the Nisei really could never feel like American soldiers so long as the military discriminated against them by placing them in a segregated unit.²³³ Again, the council members’ comments suggest broad empathy at Poston for the position of the Nisei who resisted the draft.

Later in July, some of the resisters came very close to winning the open support of the council in Poston’s Unit I. Several young resisters who were back in camp on bail appeared before the council and made a plea for financial support.²³⁴ The young men explained that they needed around \$2,000 to retain counsel to represent the Nisei who were resisting the draft.²³⁵ Their pitch to the council was touching:

We are fighting for all the Japanese. . . . We would rather go to jail and forget about everything. But that would not be good for others. We should leave in the record that the Japanese in every relocation center protested to the reinstatement of [the] Nisei draft while detained in the centers. We know we don’t have any chance of winning

226. Money raised to defray the costs of an appeal was not needed because Fujii was acquitted at trial. See *supra* notes 216-218 and accompanying text.

227. Nishimoto Diary, Entry of June 19, 1944, at 3, *supra* note 51, at Reel 237, Frame 88.

228. *Id.*

229. Nishimoto Diary, Entry of July 5, 1944, at 4, *supra* note 51, at Reel 237, Frame 132.

230. *Id.* at 5.

231. *Id.* at 4.

232. *Id.*

233. *Id.*

234. See Nishimoto Diary, Entry of July 19, 1944, at 4-6, *supra* note 51, at Reel 237, Frame 165. (Page 4 of this document is misnumbered as a duplicative page 5).

235. See *id.* at 6.

our case, but that's not the point. If we file enough cases from all over, the court might decide to listen to our plea in the end.²³⁶

Many on the council greeted the proposal enthusiastically. One block manager thought that block meetings should be called throughout Poston that evening to discuss the proposal; he was sure that there were "people willing to help in the cause."²³⁷ Another leader announced that the proposal was "a very good idea," because "it would bring out the injustice of drafting the Nisei from these 'detention' camp[s]."²³⁸ The proposal failed that evening only because Richard Nishimoto, who opposed the resisters, outmaneuvered those on the council who supported them.²³⁹

Draft resistance at Poston thus had a number of important triggers and supports in the summer and fall of 1944. Yet it also encountered skepticism and opposition that kept it from capturing and dominating the camp's political life as the Fair Play Committee did for a time at the Heart Mountain Relocation Center in Wyoming in the spring of 1944.²⁴⁰ Some of this opposition came from those who simply believed in military service for the Nisei as a categorical matter. This view was reflected in the comments of a young Nisei woman to a representative of Poston's community analysis section on July 12, 1944. "I believe," she said,

that all the [N]isei boys should be willing to fight for their country. It is true that all of us have been mistreated after the onset of this conflict but right now all of us are living in America. We are citizens of this country and so we should try our best to protect our land from any form of aggression.²⁴¹

For adherents of this view about the draft, nothing about the resisters' motives would likely have persuaded them to support the resistance.

Others, however, had doubts about the motives of the resisters. The doubts were not so much about whether some of the resisters were expressing loyalty to Japan by refusing to go into the army. There is only sketchy evidence in the historical record to support such a notion.²⁴² Rather, what some doubted was that the resistance was actually grounded in a defense of Nisei civil liberties as opposed to a simple desire to avoid the dangers of the battlefield.

For these doubts, as to some of those who resisted, the record does provide support. The first reactions of the Nisei as a group to the announcement of the

236. *Id.*

237. *Id.*

238. *Id.*

239. *See id.* at 7.

240. *See* MULLER, *supra* note 3, at 76-89 (describing the successes of the Fair Play Committee, a political group organized by internees that encouraged the eighty-five draft resisters at Heart Mountain).

241. Draft: Nisei Girl (July 12, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77.

242. *See, e.g.*, Meeting of Leave Clearance Board: Camp III (Mar. 15, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77 ("One [leave clearance] board member reported that seven out of ten [applicants for expatriation and repatriation] that he had questioned in regard to whether or not they would serve in the Japanese army against the United States replied that they would.").

reinstatement of the draft were to try to escape it through relocation or expatriation,²⁴³ not to try to fight it as a deprivation of their rights. Nishimoto's observation was that many of the resisters were "boys [who were] afraid to be killed in war," who could not be persuaded to serve by "argu[ments] about [the] virtues of serving for [their] own country."²⁴⁴ Project Attorney Rowley shared this impression of the resistance at Poston. After interviewing a number of the young men who refused to report for induction on June 18, 1944, Rowley reported that he had:

a very strong impression that their refusal to be inducted is caused by a mixture of reasons, one being a resentment at what they consider unjustified discrimination, and the other being . . . a desire to evade military service, and it seems to me that the first reason has been developed considerably as an excuse for the second.²⁴⁵

Rowley was careful to note that "[t]his [was] undoubtedly not true in all cases but, like citizens of any other ancestry, there are certain ones affected who would go almost any length rather than go into the armed forces."²⁴⁶ And perhaps most significantly, even some of the resisters themselves drew distinctions among those who were resisting on civil rights grounds and those who were not. When representatives of the resisters appeared before the Unit I council in mid-July to ask the council to underwrite their legal fees, they asked for support only for the subset of resisters who had not asked for expatriation.²⁴⁷ These differing views showed that the draft resistance at Poston was a mixed and ambiguous phenomenon, encompassing a range of motives.

V

UNITED STATES V. HIDEICHI TAKEGUMA ET AL.

This phenomenon dragged on longer than at any of the other camps because with the charged men all at liberty—or at least what passed for liberty behind the barbed wire at Poston—there was little pressure to bring their cases to trial. It was not until mid-March of 1945 that grand jury indictments were finally returned in the cases of the nearly one hundred Nisei who had refused induction over the preceding year.²⁴⁸ The indictments charged each of them with a single count of failing and refusing to report for induction when duly ordered to do so under the Selective Training and Service Act of 1940, in violation of section 311 of Title 50 of the United States Code.²⁴⁹

243. See *supra* notes 126-131 and accompanying text.

244. Nishimoto Diary, Entry of June 26, 1944, at 1, *supra* note 51, at Reel 237, Frame 104.

245. Letter from Scott Rowley to Philip M. Glick (June 26, 1944), at 1, *supra* note 51, at Reel 196.

246. *Id.*

247. See Nishimoto Diary, Entry of July 19, 1944, at 5, *supra* note 51, at Reel 237, Frame 165.

248. See Letter from Scott Rowley, Project Attorney, Colorado River War Relocation Center, to Edwin E. Ferguson, Solicitor, War Relocation Authority 3 (Mar. 12, 1945), *supra* note 51, at Reel 196, Frame 169.

249. See Brief on Behalf of the United States at 1, *Takeguma v. United States*, 156 F.2d 437 (9th Cir. 1946) (No. 11079) (on file with NARA-Pacific Alaska Region, San Francisco, CA, United States Court of Appeals for the Ninth Circuit, RG 276, Box 4347).

During the year that lapsed between the first arrests of resisters at Poston and their indictment, the staff of the Project Attorney's Office had tried hard to persuade the resisters to change their minds, but those efforts were successful in only three cases.²⁵⁰ The resisters had retained a prominent civil liberties lawyer, A.L. Wirin, to represent them.²⁵¹ Wirin had tried to persuade his clients to abandon their challenge to induction in favor of accepting induction and then challenging the application of the draft to them by writ of habeas corpus.²⁵² The resisters, however, could not be dissuaded from the course they had chosen.

Unlike the litigation in most of the other federal districts where young Nisei challenged the draft,²⁵³ the litigation before Judge Ling in the District of Arizona proceeded quickly, smoothly, and entirely by agreement of the parties. With nearly one hundred pending cases, defense attorney Wirin and federal prosecutor Frank E. Flynn decided that it would be most efficient to identify and try three cases that typified the three scenarios under which the defendants had resisted the draft at Poston.²⁵⁴ They chose the cases of Hideichi Takeguma, who had refused to submit to induction without filing a request for expatriation; Kingo Tajii, who had been ordered to report for induction after filing a request for expatriation but before the government responded to the expatriation request by ordering Tajii excluded and segregated; and Yasuto Fujioka, who had been ordered to report for induction after both his expatriation request and a government order of exclusion and segregation.²⁵⁵ All of the other resisters signed a stipulation that they would await the outcome of these three men's trials and appeals and submit themselves to whatever outcome the trial and appellate process produced.²⁵⁶ As a result, their cases were placed in a kind of suspended animation while Judge Ling moved ahead in the cases of Takeguma, Tajii, and Fujioka.

250. See *id.*; Letter from Scott Rowley, Project Attorney, Colorado River War Relocation Center, to Edwin M. Ferguson, Solicitor, War Relocation Authority 1-2 (Apr. 14, 1945), *supra* note 51, at Reel 196, Frame 179.

251. See Letter from Scott Rowley to Philip M. Glick, at 1, *supra* note 51, at Reel 196. Wirin was a Los Angeles attorney who handled many high-profile cases as counsel to the Southern California Branch of the American Civil Liberties Union and as counsel to the Japanese American Citizens League. See MULLER, *supra* note 3, at 115.

252. See Letter from Scott Rowley to Philip M. Glick, at 1, *supra* note 51, at Reel 196. Wirin's was undoubtedly sound advice. In *Falbo v. United States*, 320 U.S. 549 (1944), the Supreme Court held that the Selective Training and Service Act of 1944 did not authorize judicial review of a selective service board's classification of an individual in the context of a criminal prosecution for violation of an order to report for a particular kind of wartime service. *Falbo*, while potentially distinguishable from the situation of the Poston resisters, certainly did not augur well for their chances before Judge Ling.

253. See MULLER, *supra* note 3, at 101-14 (trial of Heart Mountain resisters in the District of Wyoming), 124-30 (trial of Minidoka resisters in the District of Idaho), 131-41 (proceedings against Tule Lake resisters in the Northern District of California).

254. See Brief on Behalf of the United States, *supra* note 249, at 2.

255. See *id.* at 2-3.

256. See Stipulation, *United States v. Ben Yumen et al.*, (D. Ariz. Apr. 23, 1945) (on file with NARA-Pacific Region, Laguna Niguel, CA), *supra* note 8, at Criminal Case No. 7071-7127, Box 182, Nos. C-7071 Phx. - C-7191 Phx. *passim*).

In April of 1945, defense lawyer Wirin filed a motion to quash the indictments on a variant of the theory that had led Judge Goodman to dismiss the charges against the Tule Lake resisters.²⁵⁷ Judge Goodman had held in *United States v. Kuwabara* that the prosecution of incarcerated Japanese Americans for resisting the draft was shocking to his conscience and therefore a violation of due process.²⁵⁸ Wirin stripped Goodman's reasoning of its constitutional underpinnings and argued instead that in the Selective Training and Service Act of 1940, Congress had not intended that American citizens imprisoned on account of their Japanese ancestry would "be subject additionally to involuntary impressments into military service."²⁵⁹ Wirin supported the motion with affidavits from Takeguma, Tajii, and Fujiota that related the circumstances of their eviction from their West Coast homes and their incarceration at Poston. Fujioka, for example, averred that his parents were "looked upon as enemies, fugitives and saboteurs, . . . [e]ven after several decades of hardships and struggles to establish themselves as respectful residents," and that because of "this ordeal, [his] mother ha[d] been seriously taken ill by the unaccustomed hardship brought upon her."²⁶⁰ As for himself, Fujioka stated that he "ha[d] been manhandled and . . . made to dwell in a location unfit for human inhabitation."²⁶¹ He and Kingo Tajii both alleged that they had applied for expatriation and had been placed on Poston's "stop list"—its list of individuals who were not permitted to leave the camp for any reason—in lieu of being transported to the Tule Lake Segregation Center, which had run out of room.²⁶²

Judge Ling denied the motion to quash the indictment without a recorded opinion.²⁶³ The case then moved to trial, and promptly, because Wirin and Flynn agreed to forego the usual adversarial process of presenting witnesses and physical evidence, and instead submitted the case for bench trial on a set of stipulated facts.²⁶⁴ Those stipulated facts included the bare essentials: that each of the three men was an American citizen of Japanese ancestry, that each had been moved by the military from the West Coast to Poston, that each had been ordered to report for induction, and that each had failed to do so.²⁶⁵ Judge Ling took the case under advisement, and two weeks later announced his judgment

257. See Appellant's Opening Brief at 2-3, *Takeguma v. United States*, 156 F.2d 437 (9th Cir. 1946) (No. 11079) (on file with NARA-Pacific Alaska Region, San Francisco, CA), United States Court of Appeals for the Ninth Circuit, RG 276, Box 4347); *Move for Quashing of 97 Indictments*, PHOENIX GAZETTE, Apr. 24, 1945, § 2, at 3.

258. See 56 F. Supp. 716, 719 (N.D. Cal. 1944).

259. Appellant's Opening Brief, *supra* note 257, at 7.

260. *Id.* at 5.

261. *Id.*

262. *Id.* at 3-5. Because the government had granted their petitions for expatriation, Fujioka and Tajii were both under Justice Department detention as alien enemies at the Santa Fe, New Mexico Detention Center by the time their cases reached the Court of Appeals. *Id.* at 2.

263. Judge Ling liked to boast that he was not one to write opinions. "That is what the Ninth Circuit is there for," he would tell counsel. See O'Connor, *supra* note 200, at 3.

264. See Brief on Behalf of the United States, *supra* note 249, at 2.

265. *Id.* at 2-3.

convicting the men of the crime with which they had been charged.²⁶⁶ On June 18, 1945, he sentenced them to prison terms of one year.²⁶⁷

It was an odd sentence. Just fourteen months earlier, Judge Ling had sentenced the first ten Poston resisters, all of whom had pled guilty, to prison terms of *three* years. Because Judge Ling did not explain his sentencing decision, it is impossible to know for sure why Judge Ling saw the Poston resisters as less culpable in June of 1945 than he had in March of 1944. But several reasons suggest themselves. By June of 1945, the Allies had already won the war in Europe and an Allied victory in the Pacific was a foregone conclusion. Poston and the rest of the WRA's relocation centers were either closed or on their way to closing.²⁶⁸ The West Coast had been reopened to loyal Japanese Americans.²⁶⁹ And Judge Ling had had the additional experience of trying—and acquitting—George Fujii on very weak sedition charges for speaking out about the government's mistreatment of Japanese Americans. Perhaps Judge Ling was coming to see more complexity and nuance to the situation of the Nisei draft resisters than he had seen on a first impression.

A.L. Wirin took an appeal of these three convictions to the United States Court of Appeals for the Ninth Circuit. He built his argument around the claim that the government had treated the Nisei as if they were aliens. "Although American citizens by birth," Wirin wrote, "the defendants because of claimed war emergency have been treated as alien enemies, interned as prisoners of war, solely because *we* have been at war with the government where *their* ancestors were born."²⁷⁰ Because the Nisei were constructive enemy aliens, Wirin argued, Congress could not have intended to draft them. Picking up on one of the ideas in Judge Goodman's decision in the case of the Tule Lake resisters²⁷¹—although not Judge Goodman's constitutional rationale—Wirin argued

that Congress did not intend, in the enactment of the Selective Training and Service Act, that persons treated as were the defendants, be nonetheless subject to military service; that denuded of essential rights of citizenship, such persons should still be subject to enforced military service—a duty traditionally, and heretofore deemed to be, an obligation of citizenship; and certainly not a duty ordinarily expected of alien enemies.²⁷²

266. See *98 Jap-Americans Found Guilty of Draft Evasion*, PHOENIX GAZETTE, June 5, 1945, §2, at 1.

267. See Appellants' Opening Brief, *supra* note 257, at 1-2.

268. The last internee departed Poston on November 28, 1945. See BURTON ET AL., *supra* note 29, at 40.

269. See GREG ROBINSON, BY ORDER OF THE PRESIDENT 227-32 (2001).

270. Appellants' Opening Brief, *supra* note 257, at 6 (emphasis in original).

271. See *United States v. Kuwabara*, 56 F. Supp. 716, 719 (N.D. Cal. 1944) (arguing that Congress' intention that those in a free and just society share the obligations of military duty in a fair and just system is inconsistent with the defendants' case since the defendants have been deprived of their due process rights).

272. *Id.* at 9.

Wirin asked the Ninth Circuit for a declaration that “under a proper construction of the legislative intent of Congress . . . , the defendants were not subject to induction in the armed forces.”²⁷³

United States Attorney Flynn replied simply to Wirin’s claim. The Selective Training and Service Act, Flynn argued, clearly stated that “every male citizen . . . shall be liable for training and service in the land or naval forces of the United States.”²⁷⁴ While the law “contemplate[d] that certain persons may be unacceptable to the armed forces because of their allegiance to other nations . . . and provide[d] that those persons shall be classified in III-C[,] . . . nothing in the regulations indicates that a person of draft age who is acceptable to the armed forces shall be deferred or exempted from military service” because of the claimed denial of their rights as citizens.²⁷⁵ Flynn had little to say about Judge Goodman’s contrary decision in the Tule Lake case; he maintained simply that it was “untenable.”²⁷⁶

The Court of Appeals for the Ninth Circuit made quick work of the appeals in *United States v. Hideichi Takeguma et al.* All seven judges of the court agreed that the convictions of the Nisei resisters should be affirmed.²⁷⁷ The court treated the three appellants slightly differently. As to Hideichi Takeguma, who never filed a petition for expatriation, the court stated bluntly that “[t]here is nothing whatever to any claim that the mere removal from the Pacific area (or confinement to any location), harsh as it was, should act to relieve anyone from the necessity of serving in the military forces.”²⁷⁸ As to Kingo Tajii and Yasuto Fujioka, both of whom had requested expatriation, the court held that their attempt to establish that they were outside the reach of the Selective Training and Service Act of 1940s was unavailing. Even if they were constructive enemy aliens and no longer citizens, the court explained, the Selective Training and Service Act accorded the raw power to the military to conscript even enemy aliens.²⁷⁹ Finally, the court cast aside Judge Goodman’s opinion in the case of the Tule Lake resisters, stating that it was “not in accord with” that ruling.²⁸⁰

One Ninth Circuit judge, however, broke ranks with his six colleagues in a modest but ultimately important way. Judge William Denman filed a short concurring opinion in which he stepped out of his narrow judicial role to say that he thought these young men deserved a break. Judge Denman shared with

273. *Id.*

274. Brief on Behalf of the United States, *supra* note 249, at 6 (quoting section 3 of the Selective Training and Service Act of 1940).

275. *Id.*

276. *Id.* at 8.

277. The Ninth Circuit consisted of only seven judges in 1946. See James R. Browning, *Innovations of the Ninth Circuit*, 34 U.C. DAVIS L. REV. 357, 357 (2000). Thus the entire court heard and decided the *Takeguma* appeal.

278. *United States v. Takeguma*, 156 F.2d 437, 440 (9th Cir. 1946).

279. *See id.*

280. *Id.* at 441.

Judge Goodman a strong sense of outrage at the government's mistreatment of the Nisei.²⁸¹ "They were United States citizens," Denman explained, who "only attempted to give up their citizenship after a continued illegal imprisonment by the Federal Government in barbed wire enclosures, guarded by armed soldiers, under conditions of great oppression and humiliation."²⁸² Of all of the many words written by judges about the Japanese American incarceration during that era, these are among the harshest.²⁸³

But then Denman framed the issue more personally, and more movingly:

Had any one of us been so wrongfully imprisoned in our youth because our parents had emigrated to this country from, say, Germany, England, or Ireland, with which there might be a war, it cannot be said that our exasperation and shame would not have caused us to prefer the citizenship of our parents' homeland. It was because the United States first cruelly wronged us by an illegal if not criminal imprisonment that our renunciation came. Even if, in our justifiable resentment, we committed acts adverse to the continuance of the war against our fatherland, it is for the United States, the first and greater wrongdoer, to be merciful. Because our skins are white and our origin is European, is no ground for distinction between our youth and that of these appellants.²⁸⁴

Denman's statement did not bring him to the conclusion that the convictions should be reversed. But it did mean that "these young men should be considered by the executive as the subject of its clemency."²⁸⁵

With no clemency from the executive forthcoming,²⁸⁶ however, the cases of the Poston resisters then returned to the courtroom of Judge Ling. As to Takeguma, Tajii, and Fujiota, the proceedings were already effectively final. But still pending were the cases of the many dozens of other resisters who had stipulated in June of 1945 to have their cases governed by the outcome of the Takeguma, Tajii, and Fujiota appeals. These approximately one hundred men²⁸⁷ had been out on bail in the interim and, with the reopening of the West Coast in late 1944 and the closing of Poston late in 1945, had gone their separate ways. Twelve of the men had reported for military service, one was dead, one was

281. See *United States v. Kuwabara*, 56 F. Supp. 716, 719 (N.D. Cal. 1944) ("It is shocking to the conscience that an American citizen be confined on the ground of disloyalty, and then, while so under duress and restraint, be compelled to serve in the armed forces, or be prosecuted for not yielding to such compulsion.").

282. *Takeguma v. United States*, 156 F.2d at 442 (Denman, J., concurring).

283. Judge Denman wrote at least equally harshly about the government's policies toward Japanese Americans in his dissent in the *Korematsu* case, see *Korematsu v. United States*, 140 F.2d 289, 300-04 (9th Cir. 1943), and in his opinion for the court in *Acheson v. Murakami*, 176 F.2d 953 (9th Cir. 1949). Justice Frank Murphy's famous dissenting opinion in *Korematsu v. United States*, 323 U.S. 214, 233-42 (1944), also took a sharply critical view of the government's program.

284. *Takeguma*, 156 F.2d at 442 (Denman, J., concurring).

285. *Id.* at 442.

286. It was not until December 23, 1946, that the president signed an executive order creating an amnesty board to consider possible clemency for World War II era draft objectors. See Exec. Order No. 9814, 11 Fed. Reg. 14,645 (Dec. 23, 1946).

287. When the defendants entered into the stipulation in June of 1945, there were ninety-five resisters (in addition to Tajii, Takeguma, and Fujiota). See 98 *Jap-Americans Found Guilty of Draft Evasion*, PHOENIX GAZETTE, June 5, 1945, §2, at 1. On October 7, 1946, when Judge Ling sentenced the group after the Ninth Circuit's decision on the *Takeguma* appeal, there were one hundred and one resisters. See *Penny Fines Meted 101 Jap-Americans*, ARIZ. REPUBLIC, Oct. 8, 1946, at 6.

hospitalized, and two had been repatriated to Japan.²⁸⁸ All of those who were able to do so, however, had to return from around the country to Judge Ling's Phoenix courtroom for their sentencing on October 7, 1946. Many made the trip with suitcases packed and ready for the prison term they were expecting to receive.²⁸⁹

As it turned out, they had packed their suitcases needlessly. Judge Ling, taking his third pass at sentencing internees from Poston for resisting the draft, again changed his mind. No transcript of the sentencing hearing survives, but a newspaper account reports that Ling highlighted the inconsistency in the government's first "banish[ing]" the men from the West Coast "to prevent their committing sabotage," but then turning around and "order[ing] [them] into military service where [the] opportunity for sabotage was limitless."²⁹⁰ Apparently Judge Ling had finally lost all patience with the inequity in the government's treatment of the Nisei. He therefore sentenced each of them to a fine of one penny.²⁹¹ The very surprised and very relieved resisters happily paid their penny and left court as free men, to return to their homes and resume the difficult process of piecing back together the lives that had been interrupted by years of incarceration at the Poston Relocation Center.

That resolution of the case left only the cases of Tajii, Takeguma, and Fujioka to settle. As Judge Ling had already sentenced them to a year in prison, the one-cent fine was not an option for these three men.²⁹² Instead, he stayed execution of their prison sentences for six months so that they could apply for the executive clemency that Judge Denman had maintained they were owed. Fourteen months later, on Christmas Eve in 1947, these three men, along with all the rest of the several hundred Japanese Americans who had resisted the draft while under WRA detention, received a full pardon from President Harry Truman.²⁹³

VI

IN DEFENSE OF AMBIGUITY

Before they were ultimately pardoned, Nisei draft resisters from the Poston Relocation Center received three different sentences. The first ten resisters were sentenced to three-year terms in 1944. Of the remaining approximately one hundred, three received sentences of one year in 1945, while the rest were

288. *See id.*

289. *See* Telephone Interview with I. Lui Kodama, at 15 (July 23, 2004); Telephone Interview with Joseph Kaminaka, at 16 (July 27, 2004).

290. *Penny Fines*, *supra* note 287.

291. *See id.*

292. At the time, a federal district court lacked the authority to alter a criminal sentence imposed during a court term after that term expired. *See United States v. Benz*, 282 U.S. 304 (1931); *United States v. Mayer*, 235 U.S. 55 (1914).

293. *See MULLER*, *supra* note 3, at 181-82.

fined a penny in 1946. Is there any way to explain this ever-diminishing assessment of the Poston resisters' wrongdoing?

One explanation is the changing circumstances of the war from March of 1944 to June of 1945 to October of 1946. In March of 1944, thousands of draft-age men at Poston remained to be called for pre-induction physical examinations and for induction, and the government naturally wished to deter as many of them as possible from making the choice that the first ten resisters had made. In addition, the Allied invasion of France had not yet begun.²⁹⁴ Japan still held the Philippines, the Marianas Islands, and large portions of China.²⁹⁵ The duration of the war and even its outcome were open questions. Manpower needs were huge. By June of 1945, Hitler had committed suicide²⁹⁶ and Germany had unconditionally surrendered.²⁹⁷ U.S. troops were well on their way to securing the capture of Okinawa.²⁹⁸ The outcome of the war in the Pacific was no longer in question. And on the day in 1946 when Judge Ling imposed the final one-penny fine, the Selective Service System suspended the military draft entirely.²⁹⁹ Plainly, the threat posed by draft evasion diminished over the two-and-a-half-year period between Judge Ling's first sentence and his last.

Another explanation is a process of education. In March of 1944, Judge Ling had little experience with the Poston Relocation Center, its residents, and the circumstances of their lives. By June of 1945, Judge Ling had witnessed—and blocked—the government's effort to use the sedition laws to silence George Fujii for complaining about the deprivation of Nisei civil rights. The United States Supreme Court had invalidated the War Relocation Authority's claimed power to keep loyal Japanese Americans in the camps,³⁰⁰ and justices of the Supreme Court had filed opinions criticizing the removal of Japanese Americans from the West Coast as unconstitutional and racist.³⁰¹ By October of 1946, the public image of Japanese Americans had gotten a boost from the victorious return from Europe of the brave and highly decorated Nisei soldiers of the 442nd Regimental Combat Team,³⁰² and Judge Denman had filed his compassionate concurring opinion in the *Takeguma* appeal laying the primary blame for the Nisei draft resistance at the feet of the government.³⁰³ Judge Ling therefore

294. The Normandy invasion began on June 6, 1944. See ROBERT GORALSKI, *WORLD WAR II ALMANAC: 1931-1945*, at 321 (1981).

295. Japan held onto the Philippines until late July of 1945. See *id.* at 413. The Marianas fell in June of 1944. See *id.* at 325-26. Japan did not completely leave China until the late summer of 1945. See *id.* at 415-18.

296. Hitler committed suicide on April 30, 1945. See *id.* at 401-02.

297. The Germans surrendered on May 7, 1945. See *id.* at 404.

298. U.S. forces completed the capture of Okinawa on June 22, 1945. See *id.* at 411.

299. See Sidney Shalett, *Draft Halted for Rest of '46 in Rush of Army Volunteers*, N.Y. TIMES, Oct. 12, 1946, at 1.

300. See *Ex parte Endo*, 323 U.S. 283 (1944).

301. See *Korematsu v. United States*, 323 U.S. 214, 226-34 (1944) (Roberts, C.J., dissenting); *id.* at 242-48 (Jackson, J., dissenting); *id.* at 234-42 (Murphy, J., dissenting).

302. See MULLER, *supra* note 3, at 179.

303. *United States v. Takeguma*, 156 F.2d 437, 442 (9th Cir. 1946) (Denman, J., concurring).

should not be overly faulted for changing his assessment of the wrongfulness of the Poston resisters' defiance. While we cannot know for sure what motivated him, there is ample evidence that his shifting sentences reflected both the diminishing threat that the resisters' defiance posed and his own increasing ability to empathize with the dilemma they faced.

The sentence on which he ultimately settled, however, had problems of its own. Judge Ling rejected the approach of all of the other federal judges who handled comparable cases. On the one hand, unlike the other judges who sentenced the Nisei draft resisters from other camps, imposing multi-year prison terms, Judge Ling sentenced the Poston resisters to a fine of just one cent. On the other hand, unlike Judge Goodman, who dismissed the criminal charges against the Tule Lake resisters, Judge Ling convicted the Poston resisters on those charges. With his criminal conviction and one-penny fine, Judge Ling appeared to create an odd and internally contradictory category of blameless guilt for the Poston resisters.

To be sure, this resolution of the dilemma of internee draft resistance lacked the moral and rhetorical power of Judge Goodman's outright dismissal of the charges: that it was "shocking to the conscience that an American citizen be confined on the ground of disloyalty, and then, while so under duress and restraint, be compelled to serve in the armed forces, or for not yielding to such compulsion."³⁰⁴ Goodman scorned the Justice Department for its "overzealousness in an attempt to reach, via the criminal process, those whom we may regard as undesirable citizens."³⁰⁵

On this point, District Judge Goodman and Circuit Judge Denman saw things at least somewhat similarly. In his concurring opinion in the *Takeguma* appeal, Judge Denman noted the "conditions of great oppression and humiliation"³⁰⁶ in which the Nisei had been held and the "justifiable resentment"³⁰⁷ that mistreatment had engendered. These oppressive conditions, for Judge Denman, made the United States, not the Nisei, the "first and greater wrongdoer"³⁰⁸ in their standoff over the draft.

Judge Goodman's approach, however, pressed beyond Judge Denman's, to absolve the Nisei of all responsibility for the choices they made, and even of the capacity to make choices. In Goodman's view, the government's unconscionable treatment of the Tule Lake resisters mooted all other questions in the case; it so thoroughly and coercively pervaded the resisters' minds as to strip them of their free agency and their responsibility for the choices they made in responding to their calls for induction.³⁰⁹ The Nisei were entirely passive receptacles of

304. *United States v. Kuwabara*, 56 F. Supp. 716, 719 (N.D.Cal. 1944).

305. *Id.*

306. *Takeguma*, 156 F.2d at 442 (Denman, J., concurring).

307. *Id.*

308. *Id.*

309. *See Kuwabara*, 56 F. Supp. at 719 ("a defendant under the[se] circumstances is not a free agent, nor is any plea that he may make, free or voluntary.")

the government's wrongdoing, rather than active beings with at least some capacity to make decisions affecting their lives. The government was not merely the "first and greater wrongdoer," as Judge Denman believed,³¹⁰ it was the *only* actor in the drama of the draft.

Judge Ling saw the situation differently. The Nisei, for Judge Ling, were actors in the drama who retained their complex human capacity to make choices in conditions of great adversity. Judge Ling did not blind himself to that adversity; his one-cent fine surely was a message to the government and to the public that no matter what their individual motives, the resisters could not fairly be punished for responding as they did to the unconscionable choice that the government had forced upon them. But he also did not blind himself to the fact that these young men did make choices, and that their choices may have been motivated by reasons ranging from the noble to the self-serving.

Judge Goodman's resolution of the cases of the Nisei draft resisters may be the more inspiring. But Judge Ling's resolution corresponds more closely to the reality of the Poston draft resistance as revealed in the notes, memoranda, and correspondence of those who observed it from close up. These sources establish that the group of Poston resisters included some who saw the draft as a moment to seek judicial redress of the wrongs practiced on the Nisei and some who saw the draft as a moment to leave an undoubtedly futile marker of protest in the historical record. It included some whose initial draft-avoiding gambit of seeking leave for agricultural work had failed, and some who felt duty-bound to care for aging and vulnerable parents in camp. It included some whose disgust at their mistreatment had matured into an out-and-out desire to abandon their citizenship and cast their lot with Japan, and some whose expatriation requests reflected a simple desire to keep their family intact. "The sad and unfortunate part of the [draft] situation," Project Attorney Rowley reported in April of 1945, "[was] that some of the boys who are resisting the draft are among our finest boys in this center."³¹¹ Yet some were also among Poston's most incorrigible troublemakers.³¹²

In sum, the convictions and one-penny fines that Judge Ling imposed on the Poston draft resisters were ambiguous and conflicted judgments. But reactions to the draft at Poston were themselves ambiguous and conflicted. They were unpredictable and often passionately human responses to unfairness and adversity. So too, of course, were the responses of those who chose to comply with the draft rather than to resist it. As one Nisei put it in July of 1944, "[a]lthough I don't especially see any reason to fight for the United States, I'd choose the army to another camp because I don't think that I can stand another couple of

310. Takeguma, 156 F.2d at 442 (Denman, J., concurring).

311. Letter from Scott Rowley to Edwin E. Ferguson, at 2, *supra* note 51, at Reel 196, Frame 179.

312. See Letter from Scott Rowley to Philip M. Glick, at 2, *supra* note 51, at Reel 196 ("I will say that the boys who are out on bond have not been creating any disturbance lately. One of them is serving time in the Yuma County Jail for disturbance, but he was a disturber before, and probably always will be.").

years in jail or a camp. [And] [i]f I had the chance, I would be more than willing to fight for the Japanese Army.”³¹³ The Nisei response to the draft at the Poston Relocation Center simply did not fit into neat dyadic pairings of “loyal” and “disloyal,” “honorable” and “dishonorable,” “courageous” and “cowardly.” They were more richly human than that.

Some at Poston understood this complexity quite clearly. Late in June of 1944, Issei parents revived the pre-evacuation practice of *soko-kai*, which was a send-off party for soldiers leaving for active duty.³¹⁴ In one block, however, this practice caused controversy among the Issei. Some favored the idea, but others argued that as Japanese aliens in a relocation center, they could not participate. As Richard Nishimoto noted in his diary, these Issei believed that “[t]hey were treated as enemy aliens, and as such they could not honor the Nisei who were to leave the camp to join the American army.”³¹⁵ The block eventually decided to do away with the *soko-kai* entirely, and instead simply to give each departing soldier a *senbetsu*, or going-away gift, of five dollars.³¹⁶ But then another problem presented itself. Some of the Nisei in the block were responding to the call for induction by refusing, and the Issei wished to acknowledge their response too. Yet the Issei realized that with the FBI watching, they “could not jeopardize their positions by giving an elaborate party to the draft dodgers.”³¹⁷ The Issei therefore compromised: they “modified the rule of donating [s]*enbetsu* to the Nisei leaving for [the military] to include the draft evaders leaving for the Yuma or Phoenix jail.”³¹⁸ They gave five dollars to the inductees and the resisters equally.

This vignette captures a great deal about the complex and ambiguous reality of the Nisei reaction to the draft at the Poston Relocation Center. It allows us to see all of the reactions and choices that the Nisei made as alternate human responses to an unjust and conflicted government demand. Judge David Ling’s decision simultaneously to punish and to excuse the Poston resisters—however inconsistent it might at first appear—shares with the Issei *senbetsu* donations an appreciation of the full human complexity of the Nisei response to adversity.

313. Selective Service: Nisei (July 19, 1944), *microformed on* Community Analysis Reports, Reel 10, *supra* note 77.

314. See Nishimoto Diary, Entry of June 28, 1944, at 6, *supra* note 51, at Reel 237, Frame 112.

315. Nishimoto Diary, Entry of Aug. 30, 1944, at 2, *supra* note 51, at Reel 237, Frame 339.

316. See *id.*

317. *Id.* at 2-3.

318. *Id.* at 3.